(30,411)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 446

L. LITTLEJOHN & CO., INC.; GENERAL SILK IMPORTING COMPANY, HENRY W. PEABODY & CO., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Record from the district court of the United States, southern district of New York	1	1
Docket entries	1	1
Libel of L. Littlejohn & Co., Inc	4	3
Motion for order to show cause	15	6
Claim of L. Littlejohn & Co., Inc	16	7
Libel of Prince Line, Limited	20	8
Libel of F. R. Henderson & Co	31	12
Order substituting Bigham, Englar & Jones as proctors for libellant	37	14
Affidavits of service of libel	38	15
Stipulation for libellant's costs	39	16
Notice of want of jurisdiction	40	16
Suggestion of want of jurisdiction	41	17
Order consolidating causes for trial	45	19
Order amending libels	64	19
Exceptions and answers to the suggestion of want of jurisdiction	67	20
Order allowing filing of suggestion of want of jurisdiction to amend libels	71	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 5, 1925

	Original	Print
Memorandum, Hough, J., on suggestion of lack of jurisdiction	72	22
Order on suggestion of want of jurisdiction	75	23
Appearances of counsel	80	25
Argument of counsel	80	25
Testimony of Anthony V. Lynch	85	27
Argument of counsel	91	29
Testimony of Benj. D. Pender	98	32
Argument of counsel	101	34
Motion to dismiss suggestion of want of jurisdiction and order denying same	105	35
Argument of counsel	106	35
Testimony of John Foster Dulles	108	36
Exhibit No. 1 in Evidence—Order that the Shipping Board should take possession of the "Neckar" and certificate thereto	123	43
Exhibit No. 3 in Evidence—Joint resolution of Congress authorizing seizure of vessels	126	44
Exhibit No. 4 in Evidence—Telegram from Commander Cruiser Force to Opnav, September 24, 1919	127	45
Exhibit No. 5 in Evidence—Affidavit of Frank H. Phipps	128	45
Exhibits Nos. 6 and 7 in Evidence—Correspondence and certificates thereto	131	46
Exhibit No. 8 in Evidence—Certificate of registry of the "Potomac"	136	50
Exhibit No. 9 in Evidence—Certificate of Charles E. Hughes	137	52
Affidavit of Bernard M. Baruch	138	53
Affidavit of C. J. Stimming	144	55
Opinion, Hand, J.	147	56
Judgment	166	58
Judge's certificate	179	58
Notice of certificate	185	61
Citation (omitted in printing)	186	61
Bond on appeal (omitted in printing)	188	61
Petition for and order allowing appeal	192	61
Assignments of error	194	62
Notice of motion for settlement of transcript of record	198	63
Order for transcript of record	199	64
Order for transcript of record (copy) (omitted in printing)	201	64
Stipulation re transcript of record	203	64
Clerk's certificate	204	65

[fol. 1] **IN UNITED STATES DISTRICT COURT**

DOCKET ENTRIES

Date	
Feb. 19, 1921.	Filed libel and stipulation for costs.
Mar. 10, 1921.	Filed affidavits of service.
Aug. 16, 1922.	Order entered sub. B. E. J.
Sept. 7, 1922.	Filed suggestion.
Sept. 26,	Filed order amending libels.
Sept. 29,	Filed order consolidating the following cases with this case for trial: 77/58-170 to 178 inc.-180-193-195-196-197-203-228-110 to 115 inc.-125 to 129 inc. 131-165 to 169 inc. 59-60-61-70-71-93 to 100 inc. 108-109-229 to 233 incl.-278-280-281-284-285-286-289-238-239-240-329.
29,	Filed order permitting filing of suggestion.
29,	Filed exceptions and answer to traverse.
29,	Filed affidavit of Bernard M. Baruch.
29,	Filed affidavit of Frank H. Phipps, Jr. and exhibits.
29,	Filed memorandum Hough, J. on order.
29,	Filed order setting issue for trial.
Oct. 4,	Filed motion for a monition for commencing prize proceedings and claim of L. Littlejohn & Co. Inc.
4,	Filed motion to traverse consolidated cause as a prize case.
4,	Filed notice of, and, motion for deposit on court of appraised value of S. S. "Antigone."
4,	Filed affidavit of C. J. Stimming.
11,	A. N. Hand, J., Case tried. Lib. Ex. 1. U. S. Ex. 9. Witness 2. Libellants Witness 1. Argued and submitted.
Jan. 23, 1923.	Filed opinion (A. N. Hand, J., 2331) libels dismissed.
Mar. 1,	Filed order dismissing libels.
1,	Filed certificate and notice.
Mar. 26,	Filed petition for appeal.
26,	Filed assignment of errors.
May 28,	Filed appeal bond.
28,	Filed citation.
June 22,	Filed order extending time to file record on appeal to July 25, 1923.

[fol. 2] 77-329

(Kirlin, Woolsey)

PRINCE LINE, LIMITED,

vs.

U. S. A.

Mar. 8, 1921. Filed libel, and stipulation for costs, and affidavits of service.
Sept. 5, 1922. Filed suggestion.
5, Filed notice of hearing.
12, Filed note of issue.
29, Consolidated with 77-57 for trial.
29, Filed in 77-57 affidavit of F. H. Phipp, Jr.

77-238

(Carter, Ledyard & Milburn)

FRANCES R. HENDERSON, HAROLD H. HENDERSON, and BANCROFT W. HENDERSON, as F. R. Henderson & Co.,

vs.

U. S. A.

Mar. 5, 1921. Filed libel and stipulation for costs.
8, Filed affidavit of service.
Sept. 7, 1922. Filed suggestion.
29, Consolidated with 77-57 for trial.
77-239, same.
77-240, "

[fol. 3] 77-57, etc.

Clerk's Number

Oct. 11, 1922.

Testimony for the U. S.
Tony v. Lynch called.
Order of seizure, Oct. 3, 1922, put on Ex. #1.
Copy Order June 30, 1917 (Executive), Ex. #2.
Copy Order Aug. 29, 1917, (Executive), Ex. #3.
Copy of despatch, from Force, U. S. N., Ex. #4.
Affidavit of Phipps, Sept. 26/22, Ex. #5.
Copy Order of Prest. May 12/17 put in Ex. #6.
Copy report of appraisers of vessel, put in Ex. #7.
Copy certificate of registry May 3, 1921, put in Ex. #8.
Copy certificate Sec'y of State Oct. 5/22, Put in Ex. #9.
Benj. E. Pendar called.
Testimony for libellant.

Affidavit of B. M. Baruch put in Ex. "A".
Adjourned to the 17th.
Resumed Oct. 23 '22.
Testimony for libellant continued.
John F. Dulles called.
Cases argued and submitted.
Briefs in a week.

[fol. 4] IN UNITED STATES DISTRICT COURT

LIBEL AND COMPLAINT OF L. LITTLEJOHN & CO., INC.—Filed February 19, 1921

First. At and during all the times hereinafter mentioned the libellant was and is now a corporation, created, organized and existing under and by virtue of the laws of the State of New York and was and is now engaged in the business of importing and dealing in rubber, gutta percha and other Far Eastern products, with its office and principal place of business at 133 Front Street, in the Borough of Manhattan, City, County and State of New York

[fol. 5] Second. The respondent United States of America does now and at all the times mentioned herein did own, operate or control the steamship "Antigone", her engines, boilers, etc. At the present time the said steamship "Antigone" is employed as a merchant vessel and is now in the Port of New York.

Third. At and during all the times hereinafter mentioned the libellant was the owner of about 6,941 cases of rubber, 645 cases of gutta percha, 924 cases of gambier, 1,534 cases of julatong, 247 bags of cube gambier, 611 bales of cube gambier and 788 bags sago flour laden on board the steamship "Gaelic Prince." The said rubber, gutta percha, gambier, cube gambier, julatong and sago flour were in good order and condition up to the time of the collision hereinafter described.

Fourth. On the 9th day of October, 1919, about 8 p. m. the said steamship "Gaelic Prince" inbound from Far Eastern ports, with libellant's said cargo on board entered Ambrose Channel in charge of a Sandy Hook pilot. The weather was fair and clear. The night was dark. The tide was the beginning of the ebb.

The "Gaelic Prince" proceeded up the channel keeping to the [fol. 6] side which lay to her starboard. When she reached a position in the Channel in the vicinity of Buoy No. 8, the red light and masthead lights of an outbound steamer, which subsequently proved to be the steamship "Antigone", were observed on the starboard bow of the steamship "Gaelic Prince." Shortly thereafter when the steamship "Antigone" was to the northward of Buoy No. 10 she sounded one blast of her whistle. The steamship "Gaelic Prince" replied with one blast and the pilot ordered the helm ported slightly. The vessel

swung a little to starboard and then on the pilot's orders was steadied on a course parallel with the Buoys. The steamship "Antigone" rounded the bend of Buoy No. 10 and showed both lights. The steamship "Gaelic Prince" again blew one blast. The steamship "Antigone", however, instead of keeping to the side of the Channel which lay to her starboard, shut in her red light and showed her green only. The steamship 'Gaelic Prince" was placed in a precarious position by this manœuvre and she blew a signal of two blasts and starboarded her helm. In the meantime the engines of the steamship "Gaelic Prince" had been slowed but when the vessels were green to green, to pass starboard to starboard, and her helm was starboarded, her engines were again put at full speed ahead. The steamship "Antigone" in this situation blew one blast and swung sharply to starboard as if she were under a port helm and collided violently with the steamship "Gaelic Prince" striking her just for-
[fol. 7] ward of the port bridge, cutting deeply into the steamship "Gaelic Prince". Water immediately began rushing into the holds of the steamship "Gaelic Prince", which resulted in serious loss and damage to the libellant's cargo. The collision occurred about 9:35 p. m. steamship "Gaelic Prince" ship's apparent time. Subsequently the steamship "Gaelic Prince" was beached in a sinking condition.

Fifth. The aforesaid collision and consequent damage to your libellant's aforesaid merchandise, were not caused or contributed to by any fault, neglect or want of care on the part of the libellant, but were due to the fault, neglect and want of care on the part of the steamship "Antigone" and those in charge of her, in the following among other particulars which will be pointed out on the trial of this action:

1. In that those in charge of the steamship "Antigone" were incompetent and inattentive to their duties.

2. In that those in charge of the steamship "Antigone" failed to maintain a sufficient and proper lookout.

3. In that those in charge of the steamship "Antigone" failed to keep their vessel to the side of the channel which lay to their starboard, as is required by the rules.

4. In that those in charge of the steamship "Antigone" having exchanged signals with the steamship "Gaelic Prince" to pass port to port, failed to keep to the southerly side of the channel, after rounding Buoy No. 10.

[fol. 8] 5. In that those in charge of the steamship "Antigone" having crossed the bow of the steamship "Gaelic Prince' and having gotten into a position to pass starboard to starboard, failed to heed the two-blast signal of the steamship "Gaelic Prince."

6. In that after the vessels were headed to pass starboard to starboard, the steamship "Antigone" ported her helm and came into collision with the steamship "Gaelic Prince".

7. In that those in charge of the steamship "Antigone" disregarded the signals of the steamship "Gaelic Prince" and swung to starboard.

8. In that those in charge of the steamship "Antigone" failed to keep their ship under proper control and to stop the ship in time to avoid the collision with the steamship "Gaelic Prince".

9. In that those in charge of the steamship "Antigone" did nothing to avoid the accident.

Sixth. By reason of the premises the libellant has sustained damage amounting to about the sum of One Hundred Ninety Thousand ($190,000.00) Dollars, as nearly as can now be estimated, no part of which has been paid although duly demanded.

[fol. 9] Seventh. All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that upon service of a copy of this libel on the United States Attorney for this district and mailing a copy thereof to the Attorney General of the United States, and the filing of a sworn return of said service and mailing in accordance with law, the respondent be required to appear and answer all and singular the matters aforesaid according to the principles of law and rules of practice obtaining in like cases between private parties and that this Honorable Court be pleased to decree to your libellant its damages with interest and costs and that your libellant may have such other and further relief as in law and justice it may be entitled to receive.

Harrington, Bigham & Englar, Proctors for Libellant.

Office & Post Office Address: No. 64 Wall Street, Borough of Manhattan, New York City.

[fol. 10] Jurat showing the foregoing was duly sworn to by R. M. Littlejohn omitted in printing.

[fol. 11] [File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

To the Honorable the Judges of the United States District Court for the Southern District of New York, Sitting as a Court of Prize:

No. —. In Prize

L. LITTLEJOHN & CO., INC., and GENERAL SILK IMPORTING COMPANY, Henry W. Peabody & Co., Isadore Goldberg, G. S. Plummer Co., U. S. Steel Products Co., Inc., The Goodyear Tire & Rubber Co., Meyer & Brown, Grace American International Corporation, John Zimmerman & Co., Hadden & Co., O. J. Weeks Co., Inc., E. L. Kirk & Valk Co., Louis Lazarus & Son, Olivier & Co., Old & Wallace, Inc., Fred Stern & Co., H. P. Winter & Co., Innes & Company, Land & Cox, Inc., Mendleson & Co., Hood Rubber [fol. 13] Company, Frederick H. Cone & Company, Inc., Poel & Kelly, Arthur E. Dowler, Doherr Grimm & Co., Paterson Boardman & Knapp, W. G. Ryckman & Co., Ward E. Pearson, William H. Stiles & Co., Rogers-Pyatt Shellac Co., T. A. Desmond & Co., Marshall Field & Co., Rosenberg & Alder, Thomett & Fehr, American Trading Company, Winter, Ross & Company, Rubber Importers & Dealers Company, J. L. Hopkins & Company, Inc., Federal Export Corporation, Mishel Leather Company, Jardine Matheson & Co., Ltd., Seton Leather Company, Ridgeway's Inc., Pell & Dumont, Charles V. Sparhawk, Inc., L. Vogelstein & Co., Inc., M. J. Brandenstein & Co., General Lumber Company, Winslow & Company, Inc., Commonwealth Mfg. Co., Lehmaier, [fol. 14] Schwartz & Co., Inc., Balfour, Williamson & Co., National Lead Company, Fitz-Dana & Co., Gaston, Williams & Wigmore, Inc., N. S. Corwin, New York Overseas Co., Inc., National Import & Export Co., Nathan Trotter Co., Mitsui & Co., Ltd., Charles F. Smillie Co., Francis R. Henderson, Harold H. Henderson & Bancroft W. Henderson, Trading as F. R. Henderson & Co.; J. C. Whitney Co., Charles T. Wilson Co., Inc., Prince Line, Limited, Claimants and Libellants,

against

STEAMSHIP "ANTIGONE;" THE UNITED STATES OF AMERICA, THE United States Attorneys for the Southern District of New York, and the Secretary of the Navy of the United States, Respondents.

MOTION FOR ORDER TO SHOW CAUSE

[fol. 15] In accordance with the provisions of Section 4625 of the Revised Statutes of the United States, the Claimants and Libellants above named as Claimants of a jus in re in the steamship Antigone, hereby respectfully move for a monition to show cause why proceedings in prize in the above entitled court shall not be commenced.

The said Claimants and Libellants further respectfully move that an order be entered directing that said monition when issued be

served on the United States Attorney for the Southern District of New York, and on the Secretary of the Navy of the United States, as well as on such other persons as the court may order to be notified.

The grounds of said motions are those stated in the claim filed herein and attached hereto.

Dated October 4th, 1922.

Bigham, Englar & Jones, Kirlin, Woolsey, Campbell Hickox & Keating, Carter, Ledyard & Milburn, Proctors for Libellants, 64 Wall Street, New York City.

[fol. 16] IN UNITED STATES DISTRICT COURT

CLAIM OF L. LITTLEJOHN & CO. INC., AS OWNERS OF A JUS IN RE IN THE STEAMSHIP ANTIGONE

L. Littlejohn & Co., Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, on its own behalf and on behalf of all the other libellants in the above entitled cause, owners and claimants of a jus in re of the steamship Antigone, appear before this Honorable Court, and claim the said steamship Antigone and state that they are the true and bona fide owners of a jus in re therein, arising from a collision on October 9, 1919, in New York Harbor between the said steamship Antigone and the steamship Gaelic Prince, through the fault of said steamship Antigone, resulting in damage to cargo owned by your claimants on board said steamship Gaelic Prince; and that no other person, whether owner of a jus in re in said vessel or otherwise, is entitled to or is the owner of said steamship Antigone except subject to a jus in re of the libellants herein.

The said claimants further state that the said steamship Antigone, a privately owned enemy vessel, was captured or seized more than two years ago by certain persons purporting to represent the United States of America; that no proceedings against said steamship Antigone for her adjudication as a prize or otherwise have been taken by any one since said capture or seizure; that more than a reasonable time [fol. 17] has elapsed within which to commence said proceedings; that the United States of America is now in possession of said steamship Antigone; and that at all the times mentioned herein a private merchant or person was the sole owner of the said steamship Antigone, and was the only person entitled, prior to the 13th day of October, 1919, to the immediate or lawful possession or control thereof.

And thereupon, the said claimants and libellants pray that this Honorable Court will be pleased to decree the delivery of the said steamship Antigone or her appraised value to them, or that the United States of America be required to show cause why proceedings in prize against said steamship Antigone shall not be commenced forthwith, and otherwise right and justice to administer in the premises.

L. Littlejohn & Co., Inc.

[fols. 18 & 19] Jurat showing the foregoing was duly sworn to by R. M. Littlejohn omitted in printing.

[fol. 20] IN UNITED STATES DISTRICT COURT

LIBEL OF PRINCE LINE LIMITED

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel of Prince Line Limited, as owner of the Steamship Gaelic Prince, and as lawful bailee of her cargo, against United States of America, as owner of the steamship Antigone, her engines, tackle, apparel, and furniture, etc., and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, alleges on information and belief as follows:

First. At all the times hereinafter mentioned, the libelant, Prince Line, Limited, was, and it still is, a corporation duly organized and existing under and by virtue of the laws of the Kingdom of Great Britain and Ireland; and it was, and is, the owner of the steamship Gaelic Prince, and the lawful bailee of the cargo on board; and it is authorized to prosecute this action.

Second. At all the times hereinafter mentioned, the steamship Antigone was, and it still is, owned and operated by the respondent, [fol. 21] United States of America, (United States Shipping Board). The said steamship Antigone is now employed as a merchant vessel, and is within the port of New York and within the jurisdiction of this Honorable Court.

The libelant elects to proceed in the present suit in accordance with the principles of a libel in rem, but not to be precluded from seeking relief in personam, as is provided by Section 3 of the Act of March 9, 1920.

Third. The Gaelic Prince is a single screw, steel cargo carrying steamship, of 6,506 gross tonnage and 3,952 net tonnage; 449.5 feet in length, and 57.3 feet beam. Until the collision hereinafter mentioned, the steamship Gaelic Prince was tight, staunch, and strong, and in all respects seaworthy; and well and fully officered, manned, equipped, and supplied.

On the night of October 9, 1919, the Gaelic Prince arrived at the entrance of New York Harbor, on a voyage from the Far East, with a full cargo of general merchandise. The weather was clear, but dark, and the tide was nearly at high water flood. A duly licensed Sandy Hook pilot, whose employment on board was compulsory, boarded the Gaelic Prince, and she entered Ambrose Channel shortly after 8 o'clock. The master was on the navigating bridge, with the [fol. 22] pilot, and the third officer; a competent seaman was stationed at the wheel; and a seaman was also stationed on lookout

watch on the extreme forward part of the forecastle deck. The regulation mast head and side lights were set and burning brightly.

The Gaelic Prince proceeded on a course up Ambrose Channel on her own starboard side of the center of the channel. While so proceeding, and while still in the outer stretch of the channel, the masthead and range lights (two bright lights) and the red side light of a vessel were sighted on the starboard bow of the Gaelic Prince. This vessel, which subsequently proved to be the Antigone, was then in the upper and northerly stretch, above the bend in Ambrose Channel. There were not any other vessels navigating in the immediate vicinity.

As the vessels approached each other, and while still in different sections of the channel, the Antigone sounded a signal of one blast, which was answered with one blast from the Gaelic Prince. The Gaelic Prince then ported her helm slightly, reduced her speed, and steadied on the channel course. The Antigone in continuing down [fol. 23] the channel crossed the bow of the Gaelic Prince from the latter's starboard to her port side, and it was later seen that she was turning to her port side to round the bend at Buoy "10," and to enter the outer stretch of the channel. The Antigone then opened her green light in addition to the red light, whereupon the Gaelic Prince sounded a second signal of one blast and directed her own course slightly more to the starboard side of the channel. The Antigone did not answer this second signal of one blast but swung rapidly to her own port side as if under a hard starboard helm, and at considerable speed; her red light became obscured and she was carried across the bow of the Gaelic Prince from the latter's port to her starboard side. This movement of the Antigone placed her on the northerly side of the center of the channel, in the outer stretch, with the vessels displaying only their green side lights to each other, and in relative positions to pass each other starboard to starboard. As it was then seen to be impossible to pass the Antigone safely port to port, and as the vessels were not far apart, the Gaelic Prince sounded [fol. 24] a signal of two blasts, starboarded the helm, and went ahead on her engines. The Antigone replied to the two blast signal by a cross signal of one blast, ported her helm, and swung rapidly to her starboard and towards the Gaelic Prince. The latter sounded an alarm signal, and stopped her engines but the collision occurred immediately, the stem of the Antigone striking the starboard side of the Gaelic Prince abreast of her No. 2 hatch with great violence, and penetrating several feet into the deck, and into the cargo compartments of No. 2 hold. The Gaelic Prince started filling, and it was seen at once that there was danger of sinking; her engines were started ahead, and she swung across the channel to the southern side and was beached in the shallow waters of Romer Shoal, in the vicinity of Buoy "9."

The collision occurred at about 8:35 p. m. by the time on the Gaelic Prince, in Ambrose Channel, southeasterly of Buoy "10," and to the northward of the center line of the channel.

The Antigone continued down the channel and then returned, but passed the Gaelic Prince without stopping or hailing her, or other-

wise offering or rendering her any assistance, although it must have been known that the latter was in distress.

[fol. 25] It became necessary to discharge and lighter part of the cargo of the Gaelic Prince and to undertake wrecking operations; and, on October 12th, the Gaelic Prince, having been again floated, she was conveyed to an anchorage off Tomkinsville and subsequently placed at her dock; the cargo was discharged, and the sound and damaged cargo separated. The Gaelic Prince later went into dry-dock and underwent very extensive repairs necessitated by reason of the collision.

Fourth. The said collision and the damages resulting therefrom were not caused or contributed to by any fault or negligence on the part of the steamship Gaelic Prince, her owner, the libelant herein, her master, pilot, officers, or members of her crew, or of those in charge of her navigation, or of anyone for whom the libelant may have been responsible, but they were caused by the steamship Antigone, and the negligence of her pilot, master, officers and members of her crew, and by those in charge of her navigation, in the following respects, among others that will be shown at the trial:

1. She was not in command or in charge of competent and careful persons.

2. She did not keep a proper and vigilant lookout.

[fol. 26] 3. She violated the provisions of Article 25 of the Inland Rules, Act of June 7, 1897, in that she did not keep to her own starboard side of midchannel.

4. She proceeded at excessive speed in making the turn at Buoy "10" in Ambrose Channel, and by improper use of her engines and helm, unnecessarily swung too far to her port side and across the channel.

5. She did not navigate in accordance with the agreement to pass port to port, but crossed from the port side of the Gaelic Prince to the latter's starboard side, and into the wrong side of the channel, thus making it impossible to carry out the agreed manoeuvre, and directly resulting in the collision.

6. She disregarded and did not answer the second signal blast of the Gaelic Prince.

7. She disregarded the two blast signal of the Gaelic Prince, but answered it by a cross signal of one blast, and swung to her starboard side, into the Gaelic Prince, when it was known or should [fol. 27] have been known that this manoeuvre would inevitably result in collision.

8. She did not slacken her speed or stop or reverse her engines to avoid collision.

9. She did not do anything to avoid the collision.

10. She did not stand by the Gaelic Prince after the collision, thus grossly violating the provisions of the Act of September 4, 1890, c 875, par. 1, 26 Stat. 425 (U. S. Comp. St. 1901, p. 2902).

Fifth: By reason of the promises and as a result of the said collision, the libelant herein has sustained heavy damages consisting of the expense of repairs to the steamship Gaelic Prince, wrecking and towage services, dockage, wharfage, survey, superintendence, and agency fees, loss of use of the vessel during the period of detention necessitated by the collision and repairs, general average, and other incidental and substantial expenses, which amount to about Four Hundred and Twenty-five Thousand Dollars ($425,000).

[fol. 28] A large amount of damage has also been sustained by the cargo that was on board the Gaelic Prince at the time of the collision, particularly the cargo in No. 2; also, there will be heavy general average and special charges on the cargo by reason of the collision and the direct consequences thereof. The extent of the total cargo damage cannot be stated definitely, at present, but it is estimated that this damage will approximate Eight Hundred Thousand Dollars ($800,000).

It has not been practicable thus far to separate and allocate the general average expenses accurately, and to state exactly the total damage to ship and cargo, respectively, inclusive of general average and special charges, but the total damage as now estimated amounts to One Million Two Hundred and Twenty-Five Thousand Dollars ($1,225,000) as aforesaid; and, the libelant begs leave to amend the libel in respect of the allocation of the damages, and to increase or decrease the amounts respectively, if, and as may be found necessary later.

Sixth: All and singular the premises of this libel are true and within the admiralty and maritime jurisdiction of the United States [fol. 29] and of this Honorable Court.

Wherefore, libelant prays that process in due of law may issue, citing the respondent to appear and answer in the premises, and that a decree may be entered herein in favor of the libelant against the respondent for the total amount of the damages, aforesaid, with interest and costs, or that the Court will grant to the libelant such other or further relief as the justice of the cause may require.

Kirlin, Woolsey, Campell, Hickox & Keating, Proctors for Libelant and S. S. Gaelic Prince.

Office and Post Office Address, 27 William Street, New York City.

[fol. 30] Jurat showing the foregoing was duly sworn to by H. C. Blackiston omitted in printing.

[fol. 31] IN UNITED STATES DISTRICT COURT

LIBEL OF F. R. HENDERSON & CO.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel and complaint of Francis R. Henderson, Harold H. Henderson and Bancroft W. Henderson, doing business under the firm name and style of F. R. Henderson & Company, against the United States of America, in a cause of collision and cargo damage civil and maritime, respectfully alleges as follows:

First: Your libelants Francis R. Henderson, Harold H. Henderson and Bancroft W. Henderson, are doing business under the firm name and style of F. R. Henderson & Company, and their principal place of business is in the Borough of Manhattan, City of New York, and within the Southern District of New York.

Second. Upon information and belief the respondent, United States of America at all times hereinafter mentioned owned and operated the steamship "Antigone" her engines, boilers, tackle, etc., and the said steamship "Antigone" her engines, boilers, tackle, etc. is now owned by the said respondent, United States of America, and is now employed as a merchant vessel and is now in the port of New York and within the jurisdiction of this Honorable Court.

Third: Upon information and belief on or about the 23rd day of August, 1919, the said steamship "Gaelic Prince" sailed from the Port of Kobe, Japan, bound on a voyage to the Port of New York, [fol. 32] laden with a shipment consisting of 3,857 cases of rubber marked "H. B. L.," which was at the time of the collision hereinafter set forth, the property of your libelants.

Fourth. Upon information and belief on the evening of the 9th day of October 1919, said steamship "Gaelic Prince" laden with your libelants' cargo as aforesaid came into collision with the steamship "Antigone" in Ambrose Channel in lower New York Harbor by reason of which, a large proportion of your libelants' said cargo of rubber became practically a total loss.

Fifth. Upon information and belief the libelants allege that the following are the circumstances of the collision; the weather was fair and clear and the night was dark. The "Gaelic Prince" with a Sandy Hook Pilot in charge of her navigation, was proceeding up Ambrose Channel keeping to that side of mid-channel which lay on her starboard side when those in charge of her navigation saw on the starboard bow, the red light and mast head lights of the "Antigone" coming down the channel. Shortly thereafter the "Antigone" blew a blast of one whistle before she reached the turn in the channel at buoy No. 10. The "Gaelic Prince" immediately replied with one blast of her whistle and her helm was ported slightly so as to direct her course a little further on the starboard

side of the channel and the vessel was steadied on a course parallel with the line of the Channel. As the "Antigone" came around the bend in the Channel at said buoy No. 10, her red and green lights were observed slightly on the port bow of the "Gaelic Prince". The "Gaelic Prince" again blew one blast and reduced her speed. The "Antigone" however, instead of keeping to that side of [fol. 33] the mid-channel which lay to her starboard, shut in her red light and showed her green light, and was observed crossing the course of the "Gaelic Prince" coming on her starboard bow. The vessels were then in such positions that each showed to the other the green light, and it was then apparent that the vessels could not pass port to port without colliding. The "Gaelic Prince" accordingly blew a signal of two blasts and put her helm hard astarboard to direct her course to port and her engines were again put full speed ahead. The "Antigone" in this situation then blew a signal of one blast and swung sharply to starboard and struck the "Gaelic Prince" on the starboard side just forward of the bridge, the stem of the "Antigone" cutting deeply into the "Gaelic Prince". Water immediately flooded the holds of the "Gaelic Prince" damaging your libelants' cargo, and the "Gaelic Prince" was immediately beached in a sinking condition.

Sixth. The collision and the damage resulting therefrom to your libelants' cargo were caused or contributed to by the fault of the steamship "Antigone" in the following particulars:

1. In that the steamship "Antigone" failed to maintain a proper lookout.

2. In that those in charge of the navigation of the steamship "Antigone" were incompetent and inattentive to their duties.

3. In that the steamship "Antigone" failed to keep to that side of the fairway or mid-channel which lay on her starboard side as provided by Article 25 of both the Inland Rules and the International Rules.

4. In that the steamship "Antigone" and those in charge of her navigation having exchange signals with the "Gaelic Prince" to pass port to port failed to keep to the southerly side of the Channel after rounding the bend at buoy No. 10.

5. In that those in charge of the navigation of the steamship [fol. 34] "Antigone" were negligent in allowing the vessel to swing too far in making the turn in the Channel causing her to swing across the bow of the "Gaelic Prince" so as to place the vessel in the position of green to green.

6. In that the "Antigone" and those in charge of her navigation after crossing the bow of the "Gaelic Prince" and getting into a position to pass starboard to starboard, failed to heed the two blast signal of the "Gaelic Prince."

7. In that after the vessels were headed to pass starboard to starboard, the "Antigone" ported her helm and came into collision with the "Gaelic Prince."

8. In that those in charge of the navigation of the "Antigone" failed to keep the vessel in proper control and to reserve and stop in time to avoid the collision.

9. In that the steamship "Antigone" and those in charge of her navigation were negligent in other particulars which your libelants will show upon the trial of this action.

Seventh. By reason of said collision your libelants have suffered damage in that a large proportion to wit: 1520 cases of said shipment of 3857 cases of rubber were badly damaged. The exact amount of the damage which your libelants sustained by reason of said collision has not yet been actually ascertained, but as your libelants are informed and believe said damages will amount to about the sum of $35,000.

Eighth. That all and singular the premises are true and within the admiralty jurisdiction of this Honorable Court.

Wherefore libelants pray that upon service of a copy of this libel upon the United States Attorney for this District and mailing a copy thereof to the Attorney General of the United States and the filing of a sworn return of such service and mailing in accordance with law, the respondent be required to appear and answer all the matters [fol. 35] aforesaid according to the principles of law and rules of practice obtaining in like cases between private parties, and that this Honorable Court be pleased to decree to your libelants their damages with interest and costs and that your libelants may have such other and further relief as in law and justice they may be entitled to receive.

Carter, Ledyard & Milburn, Proctors for Libelants.

Office & P. O. Address, 54 Wall Street, Borough of Manhattan, New York City.

[fol. 36] Jurat showing the foregoing was duly sworn to by Harold H. Henderson omitted in printing.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SUBSTITUTING PROCTORS FOR LIBELLANT—August 16, 1922

On the underwritten consent of Harrington, Bigham & Englar and on motion of Bigham, Englar & Jones,

It is hereby ordered that Bigham, Englar & Jones be substituted for Harrington, Bigham & Englar, as proctors for the Libellant.

Julius M. Mayer, U. S. D. J.

We hereby consent to the entry of the foregoing order.
Dated New York, July 18, 1922.
Harrington, Bigham & Englar, Proctors for Libellant.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF SERVICE OF LIBEL

UNITED STATES OF AMERICA,
State of New York,
County of New York, ss:

Paul C. Swartwood, being duly sworn, deposes and says: That he is over the age of 20 years; that he is a clerk in the employ of Harrington, Bigham and Englar, proctors for the libellant herein.

That on the 2 day of March, 1921, at 6.45 o'clock P. M., he served a true copy of the libel in the above action upon Hon. A. Mitchell Palmer, Attorney General, by depositing a true copy thereof in the United States Mail at the Wall Street Branch Post Office, Borough of Manhattan, City of New York (the same being one of the regular branch post offices of the New York City General Post Office), enclosed in a securely closed registered envelope with the postage thereon prepaid, addressed to the said Attorney General at his office, Washington, D. C., that being the address designated by him.

Paul C. Swartwood.

Sworn to before me this 9th day of March, 1921. Thomas P. Mackey, Notary Public, Kings County. Kings Co. Clerk's No. 393. Reg. No. 1221. Certificate filed in New York County. N. Y. Co. Clerk's No. 521. Reg. No. 1481. My Commission expires March 30, 1921. (Seal.)

UNITED STATES OF AMERICA,
State of New York,
County of New York, ss:

Paul C. Swartwood, being duly sworn, deposes and says: That he is over the age of 20 years; that he is a clerk in the employ of Harrington, Bingham & Englar, proctors for the libellant herein.

That on the 28 day of February, 1921, at 3.30 o'clock in the afternoon of said day he served a true copy of the libel in the above action on the United States Attorney, at his office at No. 45 Broadway, New York City, by delivering and leaving same personally with the Managing Clerk of said office at said time, also receiving admission of service on one copy thereof.

Paul C. Swartwood.

Sworn to before me this 9th day of March, 1921. Thomas P. Mackey, Notary Public, Kings County. Kings Co. Clerk's No. 393. Reg. No. 1221. Certificate filed in New York County. N. Y. Co. Clerk's No. 521. Reg. No. 1481. My Commission expires March 30, 1921. (Seal.)

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION FOR LIBELLANT'S COSTS

Whereas, a libel was filed in this Court on the 19th day of February, 1921, by L. Littlejohn & Company, Inc., against United States of America, in a cause of collision and cargo damage — and maritime, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant, and the said libellant and the Royal Indemnity Company, a New York Corporation having an office and place of business at No. 84 William Street, New York City the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or its surety, execution may issue against their goods, chattels and lands for the sums of One hundred and 00/100 Dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be and are bound in the sum of One hundred and 00/100 Dollars, conditioned that the libellant above-named shall pay all such costs as shall be awarded against it by this Court or in case of appeal by the Appellate Court.

Royal Indemnity Company, by J. P. Huntting, Resident Vice-President. August Westphal, Assistant Secretary.

Taken and acknowledged before me, this 19th day of February, 1921. ——— ———.

Bond No. SX-61832. #83343. mcb.

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF WANT OF JURISDICTION

SIRS: Please take notice that the suggestion of want of jurisdiction filed herein and of which the annexed is a copy, will be brought on for hearing at a stated term for the hearing of motions of the United States District Court held in and for the Southern District of New

York in the United States Court House and Post Office Building, Borough of Manhattan, City of New York, on Thursday the 14th day of September, 1922, at the opening of court on that day or as soon thereafter as counsel can be heard.

Dated New York, N. Y., August 31, 1922.

Yours, etc., William Hayward, United States Attorney for the Southern District of New York, appearing specially and not otherwise as proctor for the United States of America, as owner of the Steamship "Antigone."

Office & Post Office Address: Room 700, 45 Broadway, Borough of Manhattan, City of New York.

To Messrs. Bigham, Englar & Jones, Proctors for Libellant, 64 Wall St., New York, N. Y.

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUGGESTION OF WANT OF JURISDICTION

To the Honorable the Judges of the United States District Court for the Southern District of New York:

Now comes William Hayward, United States Attorney for the Southern District of New York, appearing specially and not otherwise as proctor for the United States of America, owner of the U. S. A. T. "Antigone," herein proceeded against for the purpose of questioning the jurisdiction of the court in this cause and respectfully suggests to the Court that this Honorable Court is without jurisdiction to proceed herein, for the reason that the said U. S. A. T. "Antigone" was, at the time of the collision mentioned and set forth in the libel herein filed, the property of the United States of America, in its possession and control and employed as a Government vessel in public service for national uses and purposes.

That the status of the U. S. A. T. "Antigone" was as follows:

1. That the U. S. A. T. "Antigone" was formerly the North German Lloyd liner "Neckar" of 9,385 gross tons and had taken refuge in a port of the United States prior to the time that war was declared upon Germany.

[fol. 42] 2. By Act of Congress of May 12, 1917, the President was directed to take over to the United States the possession and title of any vessel within the jurisdiction thereof, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States might be at war, or was flying the flag of or was under register of such nation or political subdivision or municipality thereof.

3. That by executive order made by the President of the United States of America, dated June 30, 1917, acting pursuant to the authority vested in him by the joint resolution adopted by Congress and approved by the President on May 12, 1917, entitled "Joint Resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or under register of any such nation, and for other purposes," and thereafter, pursuant to the Statute and Proclamation, as aforesaid, the title and possession of the said Steamship "Antigone" was taken over by and vested in the United States of America.

4. That on the date of the collision alleged in the libel herein filed, the said U. S. A. T. "Antigone" was under the ownership and in the possession of the United States of America and that title thereto was vested in the United States of America.

5. That on the date of the collision alleged in the libel filed, the [fol. 43] said U. S. A. T. "Antigone" was operated by the United States of America pursuant to the authority conferred by the joint resolution of Congress approved by the President on May 12, 1917, and the executive order of the President dated June 30, 1917, solely in the transportation of supplies and troops of the United States Army to and from ports in the United States of America to ports in England and France; that the said U. S. A. T. "Antigone" was operated as aforesaid by the United States of America, was navigated and manned by officers and men employed by the United States, and that the said vessel was allocated by the United States to the United States War Department.

6. That on the date of the collision alleged in the libel filed herein, to wit; on the night of October 9th, 1919, the U. S. A. T. "Antigone," operated by the United States of America as a public vessel in public service, and navigated and manned as aforesaid, was on a voyage from the port of New York to the port of Brest in France.

Wherefore, the said William Hayward, United States Attorney for the Southern District of New York, without submitting the rights of the United States to the jurisdiction of this Court, but appearing specially as aforesaid, and not otherwise, for the United States of America, as owner of the Steamship "Antigone", prays that the libel filed in the above entitled cause, and every and all proceedings had thereunder, be dismissed for want of jurisdiction, and that such [fol. 44] order be entered in the premises, as may be proper.

William Hayward, United States Attorney for the Southern District of New York, appearing specially and not otherwise, Proctor for Respondent.

Office & Post Office Address: Room 700, 45 Broadway, Borough of Manhattan, City of New York.

[fols. 45-60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONSOLIDATING CAUSES FOR TRIAL

[fol. 61] On motion of Bigham, Englar & Jones, Kirlin, Woolsey, Campbell, Hickox & Keating and Carter, Ledyard & Milburn, proctors for the libellants, and on the consent in open court of Wil-[fols. 62 & 63] liam Hayward, Esq., United States Attorney for the Southern District of New York, appearing specially on behalf of the United States of America, and it appearing that all the above entitled causes arise out of the same collision on the 9th day of October, 1919, between the steamships "Antigone" and "Gaelic Prince" and raise similar questions of fact and law, and good cause appearing therefor, it is hereby

Ordered, that the above entitled causes be and they hereby are consolidated for trial, and that the consolidated cause be entitled L. Littlejohn & Co., Inc., v. United States of America, docket number 77-57.

C. M. Hough, U. S. C. J.

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AMENDING LIBELS

On motion of Messrs. Bigham, Englar & Jones, Messrs. Kirlin, Woolsey, Campbell, Hickox & Keating, and Messrs. Carter, Ledyard & Milburn, proctors for libellants herein, and after hearing William Hayward, United States Attorney for the Southern District of New York in opposition, and it appearing that no answer has been filed to said libel, and good cause appearing therefor, it is hereby

Ordered that the second paragraph of each and every all and singular, the libels on file in the above consolidated cause be amended to read as follows:

[fols. 65 & 66] "Second. At all the times mentioned herein prior to the 13th day of October, 1919, and particularly on the 9th day of October, 1919, the date of the collision hereinafter mentioned, the steamship 'Antigone' was owned by a private person or merchant who was solely entitled to the immediate and lawful possession, operation, and control of said vessel. At no time prior to said 13th day of October, 1919, was the said Steamship 'Antigone' owned, either absolutely or pro hac vice, by the United States of America, nor by any corporation in which the United States of America or its representatives owned the entire outstanding capital stock, nor lawfully in the possession of the United States of America or of

such corporaton, nor lawfully operated by or for the United States of America or such corporation.

"On the 13th day of October, 1919, the respondent United States of America became, ever since has been, and now is in the lawful possession of the Steamship 'Antigone', but at no time has the United States of America held the legal title to or been the absolute owner of said steamship 'Antigone'.

"At the present time the steamship 'Antigone' is employed as a merchant vessel and is now in the port and Southern District of New York, and if said steamship 'Antigone' were privately owned, operated or possessed a libel and proceeding in rem in admiralty could now be maintained against her. The libellant hereby elects that this suit proceed in accordance with the principles of a libel in rem."

Dated New York, September 26, 1922.

C. M. Hough, United States Circuit Judge.

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS AND ANSWER OR TRAVERSE TO THE SUGGESTION OF WANT OF JURISDICTION

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libellants in the above entitled consolidated cause except to the pleading or paper entitled Suggestion of Want of Jurisdiction, filed herein by the United States of America through the United States Attorney for the Southern District of New York, as follows:

I. The said suggestion, being neither an Exception nor an answer to the amended libel, admits that the amended libel states facts [fol. 68[sufficient to show jurisdiction and constitute a cause of action, and that the facts alleged in the amended libel are true.

II. The said suggestion does not state facts sufficient to show want of jurisdiction or to constitute a defense to the libels herein.

A. The said suggestion does not allege facts sufficient to show that the United States of America, on the 9th day of October, 1919, was the owner or lawfully in possession of the steamship Antigone.

1. The said suggestion does not allege that any judicial proceedings, either in a Prize or any other Court, were instituted by the United States of America or anyone to detain, seize, arrest, condemn, forfeit or confiscate said steamship Antigone, or to determine her enemy or non-enemy ownership, or whether she had committed any offense justifying her seizure, condemnation or confiscation.

2. The said suggestion does not allege that the seizure therein mentioned, on which the United States must base any right it may have in relation to the vessel, was made prior to the collision on the 9th day of October, 1919.

III. The said suggestion is substantially not a pleading but a claim by the United States that it was unlawfully in possession of [fol. 69] the steamship Antigone on the 9th day of October, 1919, prior to the commencement of this suit. The United States, as a wrongdoer or unlawful possessor, is estopped and precluded from taking advantage of its own wrong and from attempting to defeat the jurisdiction of an Admiralty Court in a suit, according to the principles of suits in rem, by filing a claim or suggestion that the vessel or res involved was, prior to the institution of the suit and prior to the time that this Court acquired jurisdiction, in the unlawful possession of the United States and therefore immune. Moreover, as the amended libel alleges and admits lawful possession of the vessel by the United States at the time of the commencement of this suit, the filing of such a claim or suggestion is unnecessary and improper.

Without waiving the foregoing exceptions, the answer and traverse of the libellants to said suggestion of want of jurisdiction,

First. Denies that on the date of the collision alleged in the libel filed herein, to-wit, the 9th day of October, 1919, the steamship Antigone was under the ownership and/or in the lawful possession of the United States of America and/or that title was vested in the United States of America and/or that said vessel was the property of the United States of America and/or in its lawful possession and/or control and/or lawfully employed as a Government vessel in public service for national uses and purposes.

[fol. 70] Second. Denies that, on or prior to the 9th day of October, 1919, the steamship Antigone, which was or had been seized pursuant to the Joint Resolution of Congress of May 12, 1917 and/or the executive order of the President of the United States of America dated June 30th, 1917; and denies that, pursuant to said statute and executive order, or otherwise, the title and/or lawful possession of the said steamship "Antigone was taken over by and/or vested in the United States of America on or prior to said 9th day of October, 1919. The libellants deny particularly that any seizure or detention or taking over or vesting of title and/or possession of the steamship Antigone was made or effected on or prior to the 9th day of October, 1919 or at any time prior to the date hereof, by any judicial proceedings either in a Prize or any other Court instituted to tender, seize, arrest, condemn, forfeit or confiscate said steamship Antigone or to determine her enemy or non-enemy ownership or whether she committed any offense justifying her seizure, condemnation or confiscation.

Wherefore, the libellants pray that the said suggestion of want of jurisdiction be dismissed and that such other order be entered in the premises as may be proper.

Dated September 27th, 1922.

Bigham, Englar & Jones, Kirlin, Woolsey, Campbell, Hickox & Keating, Carter, Ledyard & Milburn, Proctors for Libellants.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING FILING OF SUGGESTIONS OF WANT OF JURISDICTION TO AMENDED LIBELS

An order having been entered herein on September 26, 1922 permitting libels in the above entitled consolidated cause to be amended in manner and form as set forth in said order, now on motion of William Hayward, United States Attorney for the Southern District of New York, specially appearing as proctor for the United States and without submitting it to the jurisdiction of the Court, it is

Ordered that the suggestions of want of jurisdiction heretofore filed in the various causes consolidated as above set forth, be and the same hereby are permitted to stand with like force and effect as to the amended libels as if filed anew.

Dated: New York, September 27, 1922.

C. M. Hough, U. S. C. J.

[fol. 72] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM ON SUGGESTION OF LACK OF JURISDICTION—September 29, 1922

I have drawn an order which is almost self-explanatory, yet I may state my reasons for so doing.

The amended libel seeks by positive averment to put the United States out of Court so far as sovereign immunity is concerned.

Nevertheless the United States comes in by this suggestion and asserts an immunity which rests either upon ownership of the Antigone or possession, control and operation thereof.

Nowhere does the suggestion use the words "lawful ownership," [fol. 73] or property or possession; but it is of course assumed that any unqualified assertion of ownership or the like is an allegation of lawful ownership, etc.

Every variant of this allegation is categorically denied by the traverse or answer.

The Court may entertain the belief (I do) that it is almost matter of public knowledge as to just how this vessel came into the possession of the United States, what had been done with her and for what she was being used when in collision with the Gaelic Prince.

The Court may believe (as I do) that the single and ultimate question here is whether vessels with the Neckar-Antigone's history could be said to be within the meaning of the law vessels belonging to the United States or public vessels of the United States.

But I am not authorized to take judicial cognizance of this matter, and I am persuaded that the documents and affidavits submitted on the suggestion-hearing, do not and cannot tell the whole story. I should want to know what the United States had done to the vessel, whether it had been re-built and re-conditioned, how it was manned and especially what if any steps had been taken by the original [fol. 74] private German owner to maintain or re-assert any claim of ownership in the original Neckar. In short I do not think that a sufficient ground-work is laid for the argument made at bar.

The practice of making suggestions like this has undoubtedly grown. It seems to me it is bad practice. In this action in personam the same issues could (and I think should) have been raised by an answer containing exceptions, or rather exceptive allegations; then a preferential trial could have been asked on the exceptive allegations relating to jurisdiction.

The best analogy to such a thing as this "suggestion" on the instant side is the trial of a claim. That is to say, it is old practice that a person proffering a claim to a vessel in rem may be called upon in limine to thresh out his right to claim. So here the United States must first thresh out its right to be dismissed without trial; and I have endeavored to frame an order which will produce a record upon which if decision is given for the Government, appeals can safely be made.

C. M. Hough, U. S. Circuit Judge.

[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ON SUGGESTION OF WANT OF JURISDICTION—September 29, 1922

This cause having come on to be heard upon a "suggestion of want of jurisdiction" filed by the United States of America, the following situation has been shown to the Court:

By the amended libel herein it is asserted that on the 9th day of October, 1919 (being the date of the collision complained of in the libel) the steamship Antigone was owned by a private person or merchant who was solely entitled to the immediate and lawful posses-

sion, operation and control thereof. Also that at all times prior to the 13th October, 1919, said Antigone was not owned either absolutely or pro hac vice by the United States of America.

By its said suggestion the United States has asserted herein that at the date of said collision, to wit: October 9, 1919, said Antigone was under the ownership and in the possession of the United States [fol. 76] of America, and that title thereto was vested in said United States; also that on said date said Antigone was operated by the United States of America as a public vessel in public service; and it further appears that said suggestion is made by the United States appearing specially for the purpose of objecting to jurisdiction and as the owner of said Antigone.

And thereupon the libellant herein has filed exceptions and an answer to said suggestion wherein and whereby said libellant denies that on 9th October, 1919, said Antigone was under the ownership and/or in lawful possession of the United States; and/or that title to said vessel was then vested in the United States or that said vessel was then the property of the United States or in the lawful possession and control of said United States.

In support of said suggestion the United States has filed the following documents:

1. Certified copy of an order transferring Antigone to Army Transport Service, dated September 24, 1919;

2. Certified copy of joint resolution adopted by Congress and approved by the President May 12, 1917;

3. Executive order issued August 29, 1917;

4. Affidavit of Frank H. Phipps, Jr., Major C. A. C., verified 26th September, 1922.

And libellant has filed in opposition to said suggestion the affidavit of Bernard M. Baruch, verified September 27, 1922.

[fols. 77–79] Now, upon consideration of the documents above enumerated, and after hearing argument of counsel, it is by the Court

Ordered: 1. That the issue raised by the suggestion above mentioned and the traverse thereof be tried by this Court, and that for the purpose of such trial this cause be placed at the head of the first Admiralty Trial Calendar on or after the first day of the term of October, 1922.

2. That the issue of fact to be tried herein is whether on 9th October, 1919, said S. S. Antigone was owned by the United States; and/or whether on said date title to said vessel was vested in the United States; and/or whether on said date said vessel was in the possession of the United States.

3. That upon the trial of said issue the burden of evidence shall in the first instance be upon the United States, which shall be obliged to produce evidence showing the facts, if any, which resulted in the alleged ownership, title and control of said United States in and of said Antigone.

4. That from the facts as found the Court will draw the legal inference or answer the legal question as to whether there was owner-United States; and/or whether on said date said vessel was in the United States on 9th October, 1919.

C. M. Hough, U. S. Circuit Judge.

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPEARANCES OF COUNSEL

Messrs. Bigham, Englar & Jones (Mr. Jones and Mr. James W. Ryan) for the Libellant.

John Hunter, Esq. and L. P. Scott, Esq. for the United States of America.

ARGUMENT OF COUNSEL

Mr. Jones: In L. Littlejohn & Company, Inc., Libellant against the United States of America, Consolidated Cause No. 77-57, on behalf of the libellant I offer in evidence the affidavit of C. J. Stimming.

It is received in evidence without objection.

[fol. 81] Mr. Jones: The United States do not call on us to produce him for cross examination.

Mr. Jones: I wish to make a motion for an order requiring the United States of America to deposit in Court the appraised value of the steamship Antigone (ex Neckar) as appraised by the Government Board of Survey in accordance with the provisions of the second section or paragraph of the Joint Resolution of Congress of May 12, 1917, authorizing the President to take over the immediate possession and title to enemy owned vessels in United States ports; or

(2) require the United States of America to amend its claim or suggestion of want of jurisdiction, by adding a prayer that the said vessel be detained, condemned, or requisitioned; or

(3) require the United States of America otherwise to institute proceedings on the prize or admiralty side of this court for the seizure, detention, confiscation, condemnation, or requisition of said vessel; or

(4) require the United States of America to withdraw its claim, or [fol. 82] suggestion of want of jurisdiction, as owner or lawful possessor of said vessel on October 9, 1919.

The grounds of this motion are among others, the pleadings and proofs on file herein, and particularly the admissions and allegations by the United States of America in its said claim or suggestion of want of jurisdiction, that although certain persons in the employ of the United States Shipping Board seized or captured said vessel, said persons did not, in accordance with the well-settled principles of

international and municipal law, promptly or at any time thereafter deliver possession and control of said vessel to a Marshal of a prize court, or deposit her appraised value in a prize or admiralty court.

Mr. Hunter: I suggest that that matter be determined on the final disposition of this matter before your Honor.

Mr. Jones: I ask leave to file the motion and will be entirely willing to have it argued later.

The Court: File the motion.

Mr. Jones: Another motion for the libellant; We move that an [fol. 83] order be entered transferring said consolidated cause to the prize side of this Honorable Court; and that said cause proceed henceforth as a proceeding in prize by the United States of America, as captor, against the Steamship Antigone for the detention, condemnation or requisition of said vessel and said libellants further move that an order also be entered that the suggestion filed herein by the United States of America alleging that the Steamship Antigone then named the Neckar was owned by an enemy private corporation and was in a United States port at the outbreak of war and at the time of the passage of the Joint Resolution of Congress of May 12, 1917, and alleging that the said vessel was thereupon seized or captured by employees of the United States or of the United States Shipping Board, and praying or asking that this court grant, recognize, establish or decree title or ownership of said vessel in or to the United States of America, be regarded and established henceforth as the libel in said prize proceeding.

And said libellants further move that an order be entered herein requiring the United States of America to deposit forthwith and at [fol. 84] once in the registry of this Court the value of the Steamship Antigone as appraised by the Government Board of Survey pursuant to section or paragraph two of said Joint Resolution of May 12, 1917.

And said libellants further move that an order be entered herein that all the libels in said consolidated cause of collision in admiralty be regarded and established henceforth as intervening claims or petitions in said prize proceedings.

I ask leave to file that motion.

The Court: It may be filed.

Mr. Jones: I wish to make a third motion:

In accordance with the provisions of Section 4625 of the Revised Statutes of the United States, the claimants and libellants above named as claimants of a jus in re in the steamship Antigone, hereby respectfully move for a monition to show cause why proceedings in prize in the above entitled court shall not be commenced.

The said claimants and libellants further respectfully move that an order be entered directing that said monition when issued be [fol. 85] served on the United States Attorney for the Southern District of New York, and on the Secretary of the Navy of the United States, as well as on such other persons as the court may order to be notified.

The Court: It may be filed.

Adjourned to October 11, 1922.

New York, October 11, 1922.

Met pursuant to adjournment; present as before.

ANTHONY V. LYNCH, JR., is sworn.

Mr. Hunter: I offer in evidence a certified copy of order of the United States Shipping Board dated July 14, 1917, authorizing Mr. Anthony V. Lynch of New York as the agent of the United States Shipping Board to take possession of and title to the steamship Neckar, together with his return thereupon written, with a further return, likewise certified annexed to the original order.

Mr. Jones: I object to the document offered in evidence insofar as [fol. 86] it purports to state any conclusions of fact.

Objection overruled.
Exception.
It is marked Exhibit 1.

Mr. Hunter: May I reserve all rights to object when motions come on, and set forth in full my reasons why any motion should not be entertained?

By Mr. Jones:

Q. As I take it from the document which has been tendered to me, Exhibit 1 in this cause, you went to Norfolk on July 17, 1917 and you went to the Navy Yard at Norfolk; is that correct?
A. Yes.
Q. And you found the Steamship Neckar at the Navy Yard?
A. At the Navy Yard.
Q. Physically in the Navy Yard?
A. Physically in the Navy Yard.
Q. You went on board the Neckar?
A. I did.
Q. Did you find anybody on board the Neckar?

Mr. Hunter: I object to this line of testimony as immaterial and not within the issues, and ask that the objection go right along.
Objection overruled.
[fol. 87] Exception.

A. To the best of my recollection, at the time that I went on board the Neckar the only ones on board that I saw were men in working costume.
Q. By "in working costume," what do you mean?
A. Blue dungarees or overalls, or some costume of that sort.
Q. Did you see any German officers of the ship on board?

Mr. Hunter: Objected to.

Objection overruled.
Exception.

A. Not to recognize them as such.

Q. On July 17, 1917, the Norfolk Navy Yard was, I suppose, carefully guarded by marines and other troops when you went there, was it not, by the United States?

Same objection, ruling and exception.

A. Well, I presume so; I don't recollect now whether I had any difficulty in getting in after I presented my credentials.

Q. When you got on board what did you do?

A. I had in my possession an original and a copy of the order taking over the vessel, a photostatic copy, of which you have there.

[fol. 88] Q. You mean you had in your possession this document which is marked "Order United States Shipping Board, Washington, D. C., July 14, 1917"?

A. Yes.

Q. That is the only document you had in your possession?

A. I think as I remember that I had also the return which is affixed to that.

Q. That was a blank paper, was it not?

A. That was a blank paper, and I affixed the original order by means of a thumb tack to some piece of boarding on board the ship and then recited a formula to the effect that I was taking possession of the ship in the name of the President of the United States and the United States Government. I then removed the original order and put the copy of it, an exact copy, in a frame and attached that frame to the ship.

Q. What did you do after that?

A. On board the ship?

Q. Yes.

A. Nothing further on board the ship.

Q. Did you leave the ship then?

A. I left the ship then.

Q. And returned to New York?

A. I am not quite clear whether I returned to New York or went on to Baltimore.

Q. How long altogether were you on board the Neckar?

A. Not to exceed half an hour.

[fol. 89] Q. As a matter of fact the ship was in the United States Navy Yard at Norfolk, was she not?

A. Yes.

Q. And it was war time and we all know that there were a lot of troops around there?

Mr. Hunter Objected to.

Objection overruled.

A. I presume there were. I couldn't say now what armed force I saw around there. I can say, however, that I saw sentries at the gate.

Q. United States sentries?

A. Yes.

Q. Either naval men or marines, you don't know which?

A. I think they were marines.

Q. Were you opposed by anyone when you went there to go on board the ship or to recite this formula or while you tacked this paper up?

A. Not after I showed my credentials, no.

Q. To whom did you show your credentials?

A. The first person I met going on board the ship.

Q. Do you know who he was?

A. No, I do not.

Q. Was he in United States naval uniform?

A. I don't think he was; to the best of my recollection the only ones that I saw on board the ship were in working clothes.

[fol. 90] Q. Did you present your credentials to workmen?

A. To the first man that I met after going up the gangplank.

Q. Was he a United States employee?

A. That I don't know.

Q. You have told us everything that you did while you were there, have you not?

A. On board the ship, yes.

Q. Or was there anything you did in connection with the ship at any other time, other than what you have told?

A. Except to swear to my return.

Adjourned till 2.30 p. m.

[fol. 91] Met pursuant to adjournment at 2.30 p. m.; present as before.

ARGUMENT OF COUNSEL

Mr. Hunter: The United States Attorney appears specially and does not submit itself to the jurisdiction of this Honorable Court in this proceeding.

Mr. Jones: There is a motion here to show cause why you should not take prize proceedings, and I suggest that all the evidence that you have in this case shall be considered as proof which you offer in evidence pursuant to that order in the event that the Court does subsequently enter it.

Mr. Hunter: No; I am going to stand on these motions in the proceedings and the lack of jurisdiction to making the transfer.

Mr. Jones: If you decide that this order to show cause should be entered will your Honor then hold the matter open so that the Government will be compelled to offer such a return as you think proper?

The Court: Yes.

Mr. Hunter: May I have marked certified copy of Executive [fol. 92] Order of June 30, 1917, which was offered in evidence before Judge Hough?

It is marked Government Exhibit 2.

Mr. Hunter: I also offer in evidence a further executive order certified by the Secretary of State August 29, 1917 directing that certain vessels be transferred by the Shipping Board to the United States Navy, in which list of vessels appears the Antigone, ex-Neckar.

It is marked Government Exhibit 3.

Mr. Ryan: The section 4625 of the Revised Statutes provides that if the Government takes property to its use without first filing a libel for its condemnation and doesn't institute its proceedings within a reasonable time any claimant against the vessel can file a libel in any district court of the United States asking for a monition to issue directed to the United States Attorney and to the Secretary of the Navy that they show cause why prize proceedings should not be begun. We have made that motion and the United States Attorney is in court, and I ask that the Court now order that the monition issue, and then that all the evidence that Mr. Hunter [fol. 93] and we are introducing shall be evidence in support of the order to show cause.

The Court: I think this should be considered in on that proceeding if I order the proceeding.

Mr. Hunter: If your Honor has jurisdiction to do it.

The Court: I realize that. But if I do make that order it will save time. I therefore think it will be wise if you make some stipulation about that. I will direct that a monition issue directed to the United States Attorney for the Southern District of New York and to the Secretary of the Navy of the United States to show cause why prize proceedings should not be commenced against the steamship Antigone ex-Neckar.

Mr. Jones: In view of that monition we shall ask the Court to adjourn the taking of further evidence in the case until the monition has been issued and we have had an opportunity to serve the Secretary of the Navy and the United States Attorney.

The Court: You want to adjourn the whole thing?

Mr. Jones: Yes sir.

Mr. Staley: We have no objection. If your Honor will enter an order we will be bound by it.

[fol. 94] Mr. Jones: May the evidence that you are offering now be treated as being in evidence on the subsequent proceedings, too?

Mr. Hunter: No.

Mr. Jones: I renew my application to adjourn.

The Court: They say they will so consider it. They say you can rely upon them that they will not burden you by doing it all over again.

Mr. Staley: If you want to offer this in evidence we will stipulate that it is the evidence that you want to offer. We will stipulate that you may use it if you want to.

Mr. Jones: I renew my motion.

The Court: I think you had better go on.

Mr. Hunter: I also offer in evidence certified copy of a dispatch

which was presented to Judge Hough at the prior hearing, from the Commissioner of the Cruiser Force directing the Antigone to be placed out of commission, and transferred to the Army Transport Service at 3.30 P. M. September 24, 1919.

Mr. Jones: So that the record may be entirely clear I understand [fol. 95] the papers which you have now offered in evidence are identical or are the same papers which you offered in evidence before Judge Hough?

Mr. Hunter: The very same, yes, sir.

The paper is marked Government Exhibit 4.

Mr. Hunter: I also offer in evidence affidavit of Frank H. Phipps, Jr., Major of Coast Artillery Corps, United States Army, sworn to the 26th day of September, 1922, which was also offered in evidence before Judge Hough.

It is marked Government Exhibit 5.

Mr. Hunter. I offer in evidence copy certified by the Secretary of the Navy of the order of the President appointing a board for the purpose of carrying out the provisions of Public Resolution No. 2, approved May 12, 1917, for the purpose of appraising the Antigone, ex-Neckar, and also certified copy of report of the Board of Appraisers, fixing the value of the Neckar at $424,260, also under the same certification a list of the names of former German ships, together with the names given those ships after being taken over, in which it appears that the Neckar became the Antigone.

The paper is marked Government Exhibit 6.

[fol. 96] Mr. Hunter: The last exhibit being marked No. 6 consists of four pages.

The report of the appraisers is offered in evidence and is marked Government Exhibit No. 7.

Mr. Jones: With reference to Exhibit No. 6 I object to the appraisal of the Naval Board as indicating any real or true value of the steamship Neckar.

Objection overruled.
Exception.

Mr. Jones: I reserve the right to introduce other evidence as to the true value of that vessel.

The Court: Very good.

Mr. Hunter: I offer in evidence certified copy of the certificate of registration dated May 3, 1921, showing the vessels enumerated under the names of the United States of America, and that her name was changed from Antigone to Potomac.

Mr. Jones: I object to the document offered in evidence on the ground that it is dated long since this suit was commenced and it recites facts which occurred, if at all, after the action was commenced.

Objection overruled.
Exception.

[fol. 97] Marked Government Exhibit 8.

Mr. Jones: Your Honor is not passing on these objections finally, but is simply overruling them for the time being?

The Court: That is true.

Mr. Hunter: I offer certificate from the Secretary of State of the United States dated October 5, 1922, in which it appears that no application, either directly or through the German Government for the return of the steamship Antigone, former Neckar, has been made; nor that any claim for compensation has been filed by the former owners.

Mr. Jones: I object to this document because it is insufficient proof to establish whether any such claim was made or was not made, and Judge Hough directed that the Government have the burden of proof showing whether such claim was made or not.

Objection overruled.
Exception.

It is marked Exhibit 9.

[fol. 98] Testimony for the United States

BENJAMIN D. PENDER, being duly sworn and examined as a witness for the United States, testifies:

By Mr. Scott:

Q. What is your occupation?

A. Naval officer in charge of the passenger ships and records for the United States Shipping Board.

Q. How long have you been in that position?

A. Approximately two years.

Q. Have you at any time had anything to do with repairing and conditioning of any of the ex-German ships?

A. Practically all that have been reconditioned as passenger ships, except the Leviathan.

Q. Do you know the former transport Antigone?

A. I do.

Q. Did you have any connection with her so far as repairs are concerned?

A. I did, but I will have to make an explanation, because about the latter part of 1920 this vessel was turned over, somewhere in 1920, from the Navy to the Shipping Board. She was then tied up and awaiting disposition, and on May 28, 1920 a contract was entered into between the United States Shipping Board and the United States Mail Steamship Company——

[fol. 99] Mr. Jones: I am going to move to exclude all evidence in regard to the contract between the United States Mail Steamship Company and the United States, as irrelevant to the issues in this case.

Objection overruled.
Exception.

Q. Will you confine yourself to the history of the repairs that were made to the Antigone?

A. That was part of my instructions; the United States Mail Steamship Company had made the specifications——

Mr. Jones: I ask that what this witness has said be stricken out.

The Court: I think everything this witness has said had better be stricken out.

By the Court:

Q. Confine yourself to the repairs on the Antigone, if any repairs were made on her.

A. The vessel was reconditioned for passenger service.

By Mr. Scott:

Q. At approximately what cost?

A. The initial cost of the contract being a time and material job, was about $400,000, of which a certain amount has been paid.

[fol. 100] Q. And these repairs were actually made?

A. These repairs were actually made by the New York Harbor Contracting Company.

Cross-examined by Mr. Jones:

Q. When were these repairs made?

A. In the early part of 1920.

Q. It was after May, 1920, wasn't it?

A. Yes.

Q. And therefore it was not the early part of 1920, but the summer of 1920?

A. It was about in May; some time soon after May.

Q. And continued until well into the autumn?

A. Oh, no; she was reconditioned in about sixty days.

Q. I believe you said the United States Mail Steamship Company paid a substantial part of the reconditioning expenses?

A. Well, if I answer that question I will have to explain a little. I have got to refer back to the contract.

Q. Who actually advanced the money?

A. It has never been advanced yet, all of it; a part of it was paid by the United States Mail Steamship Company.

By the Court:

Q. Part of it is unpaid still?

A. As I understand, there is quite an amount unpaid, still.

[fol. 100½] By Mr. Scott:

Q. The United States Mail Steamship Company was to be reimbursed by the United States Government for all these repairs, was it not?

A. Yes, and they were done under the approval of my department.

By Mr. Jones:

Q. Do you know where the Antigone was during February and March, 1921?

A. I can't tell from recollection.

Mr. Hunter: If your Honor is satisfied with the affidavit of Major Phillips, offered in evidence before Judge Hough, I may not have to call him.

Mr. Jones: I stated that I did not object to your offering that affidavit if you will permit us to offer in evidence the affidavit of Mr. Baruch. I will concede that Mr. Phipps will testify to what he says in his affidavit.

The Government rests.

[fol. 101] ARGUMENT OF COUNSEL

Mr. Jones: I have already offered in evidence the affidavit of Mr. Stimming, and I now offer in evidence the affidavit of Mr. Baruch, which was before Judge Hough at a former hearing.

It is marked Exhibit A.

Mr. Jones: If your Honor please now I should like to reserve the right to offer evidence as to the true value of the ship Neckar at the time she was seized and taken into custody by the United States Government.

Mr. Hunter: May I make this one suggestion as to Mr. Baruch's affidavit? We do not accept it as the proper interpretation, or the interpretation made by a charter party——

Mr. Jones: The Court will decide as to the proper construction to be put on it.

Mr. Hunter: As to introducing evidence about the proper value I do not object to its being put in before the Court to protect their interests, but as to the materiality of it who has a right to put in a claim of the value of the Antigone other than the owner or someone in privity with the owner?

Mr. Jones: I ask the Court if the Court will consider it when it considers all the questions in the case raised by the various motions [fols. 102–104] previously made. We think we should be permitted to show what the actual value of the vessel is. Will you concede, Mr. Hunter, that the proof which you have offered as to what was done by the Naval Board of Appraisers and the value found by that Board is not offered in proof of the value of the Antigone, but merely as to proof of the fact that such a proceeding was had?

Mr. Staley: No, I do not want to do that.
The Court: I will allow you to offer that evidence.
Mr. Jones: We can take that evidence by deposition, and when will your Honor make that monition returnable?
Mr. Hunter: I think before your Honor issues that monition the question of jurisdiction should be decided.
The Court: I will hold that motion to transfer this case and I will not grant a monition in the other until I decide this. It seems to me that is the sensible thing to do.

Adjourned till Tuesday, October 17, 1922.

[fol. 105] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS SUGGESTION OF WANT OF JURISDICTION AND ORDER DENYING SAME

Mr. Ryan: The libellants move to dismiss the Government's suggestion of want of jurisdiction and jurisdictional defense on the following grounds: First, the proof offered by the Government is insufficient to sustain its defense; Secondly, the proof is insufficient to show that the President took over the possession of the Steamship "Antigone" before October 9, 1919, when the collision occurred; Thirdly, the proof is insufficient to show that the United States Shipping Board performed before October 9, 1919, the duty delegated to it by the President of taking over possession of the "Antigone"; Fourthly, the proof is insufficient to show that A. V. Lynch ever took over possession of the "Antigone"; Fifthly, the proof is insufficient to show the performance by the President of the acts required by International Law and by the Statutes of Congress for the taking over by the President or the United States of lawful possession of or title to the "Antigone"; Sixthly, the Government has failed to comply fully with Judge Hough's order and memorandum describing in detail the proof necessary to support the Government's defense. Indeed, the proof on which the Government now rests is almost identically the same proof which was offered before Judge Hough and which he held was insufficient.
The Court: Motion denied.

[fol. 106] ARGUMENT OF COUNSEL

Mr. Ryan: May I have an exception?
The Court: Yes.
Mr. Ryan: The "Antigone" was under the charge of a pilot employed by the New York, New Jersey & Sandy Hook Pilot Association, at the time of the collision involved in this case. This pilot, whose name is Joseph T. Wood, is now on duty on the Pilot Boat off Sandy Hook, but we can have him here this afternoon or tomorrow

morning. The Master, John Chambers, of the "Antigone" testified under oath at a hearing held by the United States Government on October 10, 1919, that prior to sailing on the voyage on which the collision occurred Pilot Wood was assigned to the "Antigone" and that this pilot assumed full charge of the "Antigone" at the time she sailed and remained in charge until after the collision here involved. To save the expense and inconvenience of bringing the Pilot from his work we ask the Government to agree that the Master of the "Antigone" testified as I have stated and would so testify if called as a witness? I now show the United States Attorney a copy of the testimony of the Master of the Antigone just referred to. I now notice that the United States Attorney has a copy of his own.
[fol. 107] Mr. Hunter: The Government does not question the fact that the Master of the "Antigone" would again testify that the "Antigone" was in charge of Pilot Wood.

[fol. 108] [Title omitted]

JOHN FOSTER DULLES, called as a witness on behalf of the libellant, after being duly sworn, testified as follows:

By Mr. Ryan:

Q. What are your name, occupation and address?
A. John Foster Dulles, member of the firm of Messrs. Sullivan & Cromwell, 49 Wall Street, New York City.
[fol. 109] Q. What officer of the United States Government were you during the period following the Armistice on November 11, 1918, between the Allies and Germany?
A. I was financial adviser of the American Commission to negotiate Peace, appointed by the President of the United States. Other members were Bernard Baruch, Thomas W. Lamont, Norman Davis, and Vance McCormick.
Q. After the Armistice on November 11, 1918, did or did not you go to Paris and other parts of France with President Wilson as a member of the American Peace Commission?
A. I did.
Q. In order to function and give advice properly and completely as such financial adviser, was or was not it unnecessary for you to acquire information as to whether or not the President had taken over the possession or title to the German merchant vessels including the Antigone, which were interned in United States ports when the United States entered the War?

Mr. Hunter: Objected to as being a matter of State privilege.
The Court: Objection sustained.

Q. There was nothing confidential or privileged about that information, was there?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

[fol. 110] Q. Information that the President of the United States had formally admitted, stated, acknowledged and agreed, in France in the year 1920, that neither he nor the United States had ever taken over lawful possession of the German merchant vessels including the steamship Antigone ex Neckar which had been interned in United States ports, was published, was it not, as an item of news in the daily newspapers including the New York Times?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 in France, during the official sessions of that Peace Commission, including President Wilson, with the heads of the allied governments, particularly with Lloyd George, Prime Minister of Great Britain, Georges Clemenceau, Premier of France, and Premier Orlando of Italy, and the official representative of Germany, did or did not you hear Woodrow Wilson as President of the United States, formally admit, acknowledge and state to the assembly, including yourself, that neither he nor the United States had ever taken over lawful possession of the German merchant vessels including the steamship Neckar later known as the Antigone which were interned in United States ports at the outbreak of war between the [fol. 111] United States and Germany?

Mr. Hunter: Objected to on the ground that the disclosure of such information is a matter of diplomatic privilege which is unauthorized except by direction of the Secretary of State.

Mr. Ryan: Neither the President, the Secretary of State nor any other Cabinet officer or officer of an Executive Department of the United States has certified or suggested that the disclosure of such information would be incompatible with the public interest or is a matter of privilege. Indeed, it is common knowledge that President Wilson disclosed full information regarding these facts to the Associated Press and the New York Times for publication in the daily newspapers, and it was so published. In view of counsel's objection, however, I hereby request and demand that the United States Government's records showing these facts be produced, and particularly ask the production of the Government's records now in the possession of the United States Attorney for this district relating to the facts inquired about in the question.

It is important that the question asked the witness be answered for the following reasons:

At the time this libel was filed the Antigone was admittedly a mer- [fol. 112] chant vessel engaged in merchant service. After the collision on October 9, 1919, and before the libel was filed on March 4, 1921, the United States admittedly acquired lawful possession of the Antigone and had such possession at the time the libel was filed. Congress provided by Section 1 of the Suits in Admiralty Act of March 9, 1920, that in such a case the possession of the United States should not be interfered with by arrest of the vessel or attachment in rem, but that the libellant should have the practically equivalent substitute remedy of filing a libel against the United States in accord-

ance with Section 2 of the Suits in Admiralty Act. That has been done in this case. The situation now, therefore, is, as pointed out by Judge Hough in his memorandum opinion in this case, exactly the same as if this court, by process in rem, had arrested the Antigone as a privately owned merchant vessel. The libellants have also shown by the affidavit of C. J. Stimming, the Director General of the Nord Deutscher Lloyd, that that private corporation was the registered owner both absolutely and pro hac vice and the sole person entitled to the possession of the steamship Antigone on May 12, 1917, and at all times thereafter including the date of the collision, October 9, 1919, until just before the present libel was filed on March 4, 1921. The United States now appears as claimant of the vessel for the pur- [fol. 113] pose of establishing a privilege of sovereign immunity by attempting to prove that it was the owner and had lawful possession of the Antigone at the time of the collision on October 9, 1919. Counsel for the government have rested the government's right to lawful possession of and/or title to the Antigone on an alleged act of Woodrow Wilson as President of the United States on July 17, 1917, in taking over the immediate possession and/or title to the Antigone. The government, however, has not called President Wilson as a witness. It has rested its case almost altogether on a copy of a joint resolution of Congress of May 12, 1917, directing the President to take over the immediate possession and title to all enemy-owned vessels in United States ports; an order of John A. Donald, Commissioner of United States Shipping Board, dated July 14th, 1917, and the testimony of one Lynch that he went aboard the Antigone, then the Neckar, without first obtaining permission of her owner or lawful possessor, and tacked a slip of paper on a piece of boarding on the ship, reciting at the same time a formula to the effect that he was taking possession of the ship in the name of the President. Lynch further testified that he then did nothing further on board [fol. 113½] the ship but left her and returned to New York or Baltimore and that altogether he was on board the Neckar not exceeding half an hour and that he left no person representing him or the President on board. Lynch also testified that he never did anything further in connection with the ship except to swear to his return and that his only authority to do what he did was contained in the paper signed by John A. Donald purporting to act as the United States Shipping Board.

We now offer proof by this witness, particularly by the answer to the question just asked, that Woodrow Wilson, as President of the United States subsequently to the alleged act of taking possession, denied that he had ever taken over the immediate possession and/or title to the Antigone, and, moreover, at that subsequent time entered into an agreement for the purchase by the United States of the right to lawful possession and/or title to such interned German merchant vessels including the Antigone. This statement and denial of the President of the United States are offered by us as an admission by the respondent. The statement is also offered to contradict the government's evidence by showing the untruth of the allegation by the government in its suggestion of want of jurisdiction that the

President of the United States took over either the immediate posses-
[fol. 114] sion or the title to the Antigone in July, 1917, or at any other time.

The Court: Objection sustained.

Q. At the same time, and under the same circumstances, did or did not you hear Woodrow Wilson as President of the United States, formally admit and acknowledge before that assembly that neither he nor the United States had ever taken over lawful possession of or title to the German merchant vessels including the Neckar, later known as the Antigone, which were interned in United States ports at the outbreak of war between the United States and Germany?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 in France, did or did not Woodrow Wilson as President of the United States, in your hearing admit, acknowledge and state that neither the President nor the United States had taken over possession of the interned German merchant vessels including the Antigone because neither the President nor any officer of any of the Executive Departments of the United States, nor any person commissioned by the President, had taken over possession of those vessels including the Antigone?

[fol. 115] Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 in France, did or did not Woodrow Wilson as President of the United States in your hearing, admit, acknowledge and state that no proceedings had been taken by him or by any officer or agent of the United States in any prize or admiralty court, to have the interned German merchant vessels including the Antigone detained or condemned and, therefore, that neither the President nor the United States had ever taken over the possession or title to such interned German merchant vessels including the Antigone?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 in France, did or did not Woodrow Wilson as President of the United States, in your hearing, admit, acknowledge and state that neither he nor the United States had ever taken over lawful possession of the Antigone ex Neckar, because neither he nor any officer of an Executive Department of the United States had taken over such possession and because the independent establishment, the United States Shipping Board, by failing to pass a formal
[fol. 116] resolution appointing an agent to take over such possession of the Antigone, and by the failure of such agent to take over possession, had not performed its delegated duty?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 on the day before or shortly before the occasion already referred to, when President Wilson denied that he had ever taken over lawful possession of the Antigone ex Neckar, did or did not Woodrow Wilson, as President of the United States, say to you personally in Paris, France, that neither he nor the United States had ever taken over lawful possession of or title to the German vessels including the steamship Neckar, later known as the Antigone, which were interned in United States ports at the outbreak of war between the United States and Germany on April 6, 1917?

Mr. Hunter: Objection to on the same grounds.
The Court: Objection sustained.

[fol. 117] Q. In the year 1920 in France, did or did not Woodrow Wilson, as President of the United States, say to you personally that he had never commissioned or authorized the commissioning of the steamship Neckar, later known as the Antigone, as a public or other vessel of the United States?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 in France, did or did not Woodrow Wilson as President of the United States in your hearing and while you were present as financial adviser of the American Peace Commission, enter into an agreement with Great Britain represented by Prime Minister Lloyd George, France represented by Premier Georges Clemenceau, and Italy represented by Premier Orlando, whereby, in consideration of Great Britain, France and Italy, and the other Allies who had signed the Treaty of Versailles, granting to the United States lawful possession of and title to the German merchant vessels including the steamship Neckar, later known as the Antigone, which were in the United States ports at the outbreak of war between Germany and the United States, Woodrow Wilson, as President of the United States, agreed that the United States would pay to the Repa-[fol. 118] rations Commission to the credit of Germany and German Nationals, one hundred million dollars at the market value of said German merchant vessels including the Antigone?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. Was or was not the agreement just referred to in writing?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 in France, did or did not Woodrow Wilson, as President of the United States, in your hearing and while you were present as financial adviser of the American Peace Commission, enter into a treaty with Great Britain represented by Prime Minister Lloyd George, France represented by Premier Georges Clemenceau, and Italy represented by Premier Orlando, whereby, in consideration of Great Britain, France and Italy, and the other Allies who had

signed the Treaty of Versailles, granting to the United States lawful possession of and title to the German merchant vessels including the steamship Neckar, later known as the Antigone, which were in the United States ports at the outbreak of war between Germany and [fol. 119] the United States, Woodrow Wilson, as President of the United States, agreed that the United States would pay to the Reparations Commission to the credit of Germany and German Nationals, one hundred million dollars as the market value of said German merchant vessels including the Antigone?

Mr. Hunter: Objected to on the same grounds.

The Court: Objection sustained.

Mr. Ryan: I request and demand that the Government produce the original or a copy of the agreement and/or treaty referred to in the previous questions, which was entered into between Woodrow Wilson as President of the United States, Lloyd George as Prime Minister of Great Britain, Georges Clemenceau as Premier of France, and Premier Orlando of Italy, whereby, in consideration of Great Britain, France and Italy granting to the United States lawful possession of and title to the German merchant vessels including the steamship Neckar, later known as the Antigone, which were in the United States ports at the outbreak of war between Germany and the United States, Woodrow Wilson, as President of the United States, agreed that the United States would pay to the Reparations Commission to the credit of Germany and German Nationals, one hundred million dollars as the market value of said German vessels in- [fol. 120] cluding the Antigone?

Mr. Hunter: I object to produce such agreement or treaty on the grounds already stated.

Mr. Ryan: You do not deny, do you, that the original and several copies of that agreement or treaty are in this Government's possession?

Mr. Hunter: I neither deny nor admit anything.

Mr. Ryan: I ask the Court to direct the Government to produce the agreement or treaty referred to.

The Court: Does the Government dispute the facts assumed in Mr. Ryan's questions?

Mr. Hunter: I haven't the complete Government's files regarding all the facts. However, from what files and information I have, the Government's position is that it rests on the ground that the disclosure of such information is a matter of State or diplomatic privilege.

The Court: As the Government has refused to produce the agreement or treaty, your rights are protected. My findings and ruling will be on the assumption that the facts inquired about in your various questions are true.

Mr. Ryan: I offer in evidence a copy of the agreement or treaty already described as printed and published in complete form in hæc verba in the New York Times exactly as delivered to a representative of that newspaper by President Wilson.

Mr. Hunter: Objected to on the same grounds.

The Court: Objection sustained.

[fol. 121] Q. In the year 1920 in France, did or did not Lloyd George as Prime Minister of Great Britain allege and charge in the presence and hearing of yourself, Woodrow Wilson as President of the United States, Premier Clemenceau of France and Premier Orlando of Italy and others, that neither the President of the United States nor the United States had ever acquired lawful possession of the German merchant vessels including the steamship Antigone ex Neckar, which were interned in United States ports at the outbreak of war between the United States and Germany because the prize court proceedings required by international law for the acquirement by the President or the United States of lawful possession of such vessels, had not been performed; and did not Woodrow Wilson as President of the United States admit such statement and charge?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Q. In the year 1920 in France, did or did not Georges Clemenceau as Prime Minister of France, in the presence and hearing of yourself, Woodrow Wilson as President of the United States, Lloyd George as Prime Minister of Great Britain, and Premier Orlando of Italy and others, allege and charge that neither the President of [fol. 122] the United States nor the United States had ever acquired lawful possession of the German merchant vessels including the steamship Antigone ex Neckar, which were interned in United States ports at the outbreak of war between the United States and Germany because the prize court proceedings required by international law for the acquirement by the President of the United States of lawful possession of such vessels, had not been performed; and did not Woodrow Wilson as President of the United States admit such statement and charge?

Mr. Hunter: Objected to on the same grounds.
The Court: Objection sustained.

Mr. Ryan:

Q. Have you in your possession, and if so will you produce a true copy of the agreement and/or treaty between President Wilson, Lloyd George, Clemenceau and Orlando, which was referred to a few minutes ago?

Mr. Hunter: Objected to on the same grounds. I protest against the production by this witness of such agreement or treaty. That is a matter for the State Department.
The Court: Objection sustained.

[fol. 123] Ex. #1.—Oct. 11, 1922

United States [Vignette] of America

United States Shipping Board

October 3, 1922.

I hereby certify that the annexed Order of the United States Shipping Board dated July 14, 1917, authorizing Mr. Anthony V. Lynch as its agent to take possession of the vessel Neckar and Return dated July 25, 1917, by Anthony V. Lynch certifying that he carried out the instructions given in the aforementioned Order, are true and correct copies of the original documents on file in the United States Shipping Board.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the United States Shipping Board to be affixed, on the day and year first above written.

Carl P. Kremer, Assistant Secretary United States Shipping Board. (Seal of the United States Shipping Board.)

[fol. 124] Order

United States Shipping Board

Washington, D. C., July 14, 1917.

Mr. Anthony V. Lynch, New York, N. Y.

Sir: The President has issued an Executive Order authorizing the United States Shipping Board, on behalf of the United States, to take possession and title to the Neckar, now lying or shortly to arrive at Norfolk, Va., and you are hereby authorized and appointed by the United States Shipping Board as its agent to take possession of said vessel as contemplated in said Executive Order. Proceed aboard of said vessel at once and take possession of her in the name of the United States Shipping Board for and on behalf of the United States of America, affixing this Order on some conspicuous part of the ship, and leaving a true copy in its place when the original is removed. You are instructed thereupon to make Return, under oath, upon this Original Order of your action in the premises.

Very truly yours, United States Shipping Board, by John A. Donald, Commissioner.

To the United States Shipping Board:

I hereby that I have complied with the instruction contained in the foregoing Order.

Anthony V. Lynch.

July 17th, 1917.

[fol. 125] Return

UNITED STATES OF AMERICA,
Southern District of New York:

On this 25th day of July personally appeared before me Anthony V. Lynch, who, being personally known to me, and known to me to be the person named in the foregoing Order of the United States Shipping Board, and who, being by me first duly sworn, deposes and says: That, upon receipt of the foregoing Order of the United States Shipping Board instructing him to take possession as thereunder contemplated of the Neckar he carried out the instructions therein given as follows:

He found the Neckar which was a vessel covered by the Executive Order of the President of the United States and the resolution of the United States Shipping Board, lying in the Navy Yard or at Norfolk, in the State of Virginia, and within the territorial waters of the United States of America, and that he proceeded aboard of said vessel with the foregoing Original Order and did affix the same upon a conspicuous part of the vessel, and after removing the Original Order did leave a copy thereof in its place.

Anthony V. Lynch.

Subscribed and sworn to before me this 25th day of July, 1917. Alex Gilchrist, Jr. (Seal.)

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Martin T. Manton, one of the Judges of the District Court of the United States for the Southern District of New York, do hereby certify, that Alexander Gilchrist, Jr. whose name is subscribed to the preceding exemplification, is the Clerk of the said District Court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the said exemplification is the Seal of the said District Court, and that the attestation thereof is in due form of law.

Dated New York, July 25th, 1917.

Martin T. Manton, United States District Judge.

[fol. 126] Ex. #3

The Joint Resolution of Congress of May 12th, 1917, "authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes" (Fed. Stat. Ann. 2nd Ed. Supp. 1918, p. 803) provides:

"That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under the register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation."

[fol. 127] Ex. 4—Oct. 11, 1922

I-12885

English.
From: Commander Cruiser Force, New York.
To: Opnav.

U. S. S. Antigone placed out of commission and transferred to Army Transport Service at 3.30 p. m. September 24, 1919.

Commander Cruiser Force.

9-24-19.

Certified to be a true copy. Paul P. Blackburn, Commander, U. S. N.

[fol. 128] Ex. #5—Oct. 11, 1922

PRINCE LINE, LTD., as Owner of the Steamship "Gaelic Prince".

vs.

UNITED STATES OF AMERICA, as Owner of the U. S. A. T. "Antigone"

STATE OF NEW YORK,
City of New York, ss:

Frank H. Phipps, Jr., being duly sworn, upon his oath deposes and says:

That he is a Major in the Coast Artillery Corps., United States Army; that on the 9th day of October, 1919, and prior and subsequent thereto, he was a Colonel in the Coast Artillery Corps of the United States Army and was Superintendent of Water Transportation in the Army Transport Service for the Port of New York; that as such Superintendent of Water Transportation he had charge and control of all of the army transports leaving the Port of New York; that on September 24, 1919 at 3:30 P. M. the United States Navy Transport and Cruiser Force placed out of commission the Navy Transport "Antigone", transferring the said vessel to the U. S. Army Transport Service; that on that date and at that time, he took charge and control of the "Antigone" and placed a master officers and crew on board the "Antigone", who were at that time sworn in in the U. S. Army Transport Service; that thereafter on the 9th day of October, 1919, he gave orders to the captain of the Army Transport "Antigone" to sail from the Port of New York and proceed to Brest, France, in order to transport troops from Brest to the United States of America; that on October 9, 1919 the United States Army Transport "Antigone" sailed pursuant to such orders and while proceeding down the Ambrose Channel on her way to sea, came in collision with the SS "Gaelic Prince"; that at the time of the collision the U. S. A. T. "Antigone" was an Army Transport in the possession and control of the United States under his supervision and was carrying no cargo except 61 cases, crates, [fols. 129 & 130] etc., of household effects consigned to Captain Ivan Jones, Asst. Military Attache in Berne, Switzerland, and further deponent sayeth not.

Frank H. Phipps, Jr., Major C. A. C., U. S. Army.

Subscribed and sworn to before me this 26th day of September, 1922. Fred'k. J. V. Wagner, Notary Public, Kings County, No. 249, No. 3064. Certificate filed New York County No. 125, No. 3144. My term Expires March 30, 1923. (Seal of Fred'k J. V. Wagner, Notary Public of Kings County.)

[fol. 131] Ex. No. 6—Oct. 11, 1922

United States of America,

[Vignette]

Navy Department

Washington, October 2, 1922.

I hereby certify that the annexed documents are true copies of records on file in the Office of the Chief of Naval Operations.

R. E. Coontz, Chief of Naval Operations.

Office of the Secretary

I hereby certify that Robert E. Coontz, who signed the foregoing certificate, was at the time of signing Chief of Naval Operations, and that full faith and credit should be given his certification as such.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Navy Department to be affixed this second day of October, one thousand nine hundred and Twenty-two

Edwin Denby, Secretary. (Seal of Navy Department.)

[fol. 132] The White House,

Washington, D. C.

May 19, 1917.

To: Captain William A. Gill, U. S. N., President Board of Inspection & Survey, Navy Department (Secretary of the Navy).

Subject: Senior Member of Board relative to taking over certain vessels belonging to any Corporation, citizen, or subject of any nation with which the United Sates may be at war.

1. The following Board is hereby appointed for the purpose of carrying out the provisions of Public Resolution No. 2, 65th Congress (S. J. Res. 42), approved May 12, 1917:

Captain William A. Gill, President;
Captain Emil Theiss, Member;
Naval Constructor William P. Robert, Member;
Paymaster John S. Higgins, Member and Recorder;
Lieutenant Daniel H. Cox, Naval Reserve.

2. The Board is hereby authorized to call for information and assistance in this connection from any and all agencies in any Department of the Government that are in a position to supply the same.

(S.) Woodrow Wilson.

I certify this to be a true copy.

(Sd.) E. L. Lowman, Asst. Paymaster, U. S. N. R. F.

"B"

Navy Department, Washington

N-31/Hn.

October 31, 1917.

Sir: It is requested that Lieutenant-Commander Charles S. Joyce, U. S. N., be appointed as a member of the Board to Appraise Enemy Vessels, to take the place of Captain Emil Theiss, U. S. N. (Deceased).

(S.) Josephus Daniels.

The President, the White House, Washington, D. C.

[fol. 133] The White House,
Washington, D. C.
Nov. 3, 1917.

Approved.
(S.) Woodrow Wilson.

I certify this to be a true copy.
(Sd.) E. L. Lowman, Assistant Paymaster, U. S. N. R. F.

"C"

Navy Department, Washington

N-31/UB.
December 13, 1917.

SIR: The President of the Board to Appraise Enemy Vessels reports that the work of appraising enemy vessels has advanced to such a point that the services of Paymaster John S. Higgins, U. S. N., as a member of that Board can be spared therefrom. His services are urgently required for other duty. It is, therefore, requested that Paymaster Higgins' designation as a Member of the Board to Appraise Enemy Vessels be revoked and he thereby released for assignment elsewhere.
Faithfully yours, (S.) Josephus Daniels.

The President, the White House, Washington, D. C.

The White House
17 December, 1917.

Approved.
(S.) Woodrow Wilson.

I certify this to be a true copy.
(Sd.) E. L. Lowman, Asst. Paymaster, U. S. N. R. F.

"D"

[fol. 134] Navy Department
Board to Appraise Enemy Vessels,
Washington
1st May, 1918.

From: Board to Appraise Enemy Vessels.
To: The Secretary of the Navy.
Subject: S. S. Neckar—Actual value of at the time of taking.

References:

(A) Public Resolution No. 2 (S. J. Res. 42), approved May 12, 1917, (copy appended, marked "A").

(B) Precept of the Board, approved by the President May 19, 1917. (Copy appended, marked "B").

(C) Order making Lieutenant Commander C. S. Joyce a Member of the Board, vice Captain Emil Theiss, deceased, approved by the President November 3, 1917. (Copy appended, marked "C").

(D) Order revoking the appointment of Paymaster J. S. Higgins as a member of the Board, approved by the President December 17, 1917. (Copy appended, marked "D").

(E) Correspondence relative to certain property said to belong to the Ocean Comfort Co., (copies appended, marked "E").

1. The Board appointed by the Secretary of the Navy, under date of May 19, 1917, with the approval of the President, after full and careful consideration of the age and physical condition of the Steamship "Neckar," its equipment and appurtenances at the time of the taking thereof and all other information and facts bearing upon the value thereof, has ascertained and determined the actual value of the said vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, to be Four hundred twenty-four thousand two hundred sixty ($424,260) dollars.

This vessel is composed of the following items:

(A) The vessel, its equipment and appurtenances...	$423,300.00
(B) All other property contained therein, including fuel, consumable supplies, cargo, etc., but not including items in (E) above.....	960.00
Total	$424,260.00

W. A. Gill, Captain, U. S. N., President. W. P. Robert, Naval Constructor, U. S. N., Member. C. S. Joyce, Lieutenant Commander, U. S. N., Member. Daniel H. Cox, Lieutenant, U. S. N. R. F., Member.

Ex. #7—Oct. 11, 1922

[fol. 135] In reply address the Secretary of the Navy and refer to No. —.

Navy Department, Washington

Sept. 1, 1917.

General Order No. 320

Names of Former German Ships

1. The names of the ex-German vessels which have been transferred to the Navy are hereby changed as follows:

Vaterland to Leviathan.
Kronprinzessin Cecilie to Mount Vernon.

Kaiser Wilhelm II to Agamemnon.
Amerika to America.
Hamburg to Powhatan.
Grosser Kurfurst to Æolus.
Kœnig Wilhelm II to Madawaska.
Neckar to Antigone.
Rhein to Susquehanna.
Princess Irene to Pocahontas.
Frederick der Grosse to Huron.
Barbarossa to Mercury.

The vessels George Washington, President Grant and President Lincoln will not be renamed.

2. The names of the tugs Huron, Pocahontas and Powhatan are hereby changed to Allegheny, Chemung and Cayuga, respectively.
(Signed) Josephus Daniels, Secretary of the Navy.

2 October, 1922.

I hereby certify that this is a true copy.
F. S. Curtis, Chief Clerk.

[fol. 136] Ex. #8—Oct. 11, 1922

Cat. No. 1266.
(This form is for use in making duplicate of Certificate of Registry for Bureau of Navigation.)
Insert "permanent" or "temporary": Permanent Register No. 531. Official No. 215458; letters L H Q W.

The United States of America,

Department of Commerce,

Bureau of Navigation

Duplicate Certificate of Registry

S. D. M.
Measured New York, N. Y., 1921; rebuilt at ——; remeasured ——; radio call: K O K N; service: Ocean freight; number of crew: 98.

In pursuance of chapter one, title XLVIII, "Regulation of Commerce and Navigation," Revised Statutes of the United States, Act of May 12, 1917,[1] Frank Walsh, of New York, N. Y., Authorized Agent, having taken and subscribed the oath[2] required by law, and having sworn[3] that[4] United States of America, represented by United States

[1] Insert name and address of person by whom oath or affirmation was made.
[2] Substitute "affirmation" when necessary.
[3] Substitute "affirmed" when necessary.
[4] If there is only one owner, write "he" or "she;" if more than one owner, write "he (or she) owning" and the part owned, "together with" followed by the names of other owners, their shares and addresses.

Shipping Board, is the only owner of the vessel called the "Potomac," of New York, N. Y., whereof William MacLeod is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1900, at Goestemunde, Germany, of[5] steel, as appears by[6] P. R. No. 440, issued at New York, N. Y., March 19, 1921, now surrendered, Name changed from "Antigone" by Authority Commissioner of Navigation, telegram 3850/824, May 2, 1920, and[7] said register having certified that the said vessel is a steamship; that she has three decks, four masts, a plain head, and a- elliptic stern; that her register length is 499.3 feet, her register breadth 58.1 feet, her register depth 28.8 feet, her height — feet; that she measures as follows:

	Tons	100ths
Capacity under tonnage deck[8]	6,508	23
Capacity between decks above tonnage deck	1,980	59
Capacity of inclosures on the upper deck, viz:[9] Forecastle, 183.33; bridge, 681.83; poop, 235.89; break, —; houses—round, 99.97; side, —; chart, 10.65; radio, 6.28; excess hatchways, signals, 2.26; [10]light and air, ——	1,220	21
Gross tonnage	9,709	03
Deductions under Section 4153, Revised Statutes, as amended:		
Crew space, 850.40; Master's cabin, 12.81; Steering gear, —; Anchor gear, 11.88; Boatswain's stores, 75.00; Chart house, 10.65; Donkey engine and boiler, —; Radiohouse, 6.28; Storage of sails, —; Propelling power (actual space[11] 1,755.60), (32%) 3,106.88; Signals, 2.26.		
Total deductions	4,076	16
Net tonnage	5,632	..

I. H. P. 3147.

The following-described spaces, and no others, have been omitted, viz: [12]Forepeak used for water-ballast, —; aftpeak used for water-bal-

[5] Write "wood," "iron," "steel," or as required.

[6] Cite surrendered marine document or write "certificate of——, builder," if first document of a new vessel.

[7] Write "said register," "said enrollment," or "said license." In the first document of a new vessel, give the name and title of the measurer.

[8] Name and give tonnage of each compartment in double bottom and of each peak tank used other than for water ballast which is included herein.

[9] Carry total of all inclosures to spaces at end of next line.

[10] To be included in gross only when authorized by the Commissioner of Navigation.

[11] Insert tonnage representing actual machinery space used in ascertaining propelling power.

[12] To be exempted, cabins and staterooms for passengers must be on a deck which is not a deck to the hull; all other spaces except forepeak, aftpeak, and other water-ballast spaces must be on or above the upper deck to the hull. Give tonnage of each space.

last, —; companionways, 3.18; battery, 6.22; bakery, 19.24; skylight, 11.31; open forecastle, —; open bridge, 8.70; open poop, —; open shelter-deck, —; anchor gear, —; steering gear, 45.91; donkey engine and boiler, 35.57; light and air, 214.69; wheelhouse, 12.48; galley, 89.50; condenser, —; water-closets, 102.61; cabins, 361.40; and the said[18] —— —— having agreed to the description and admeasurement above specified, according to law, said vessel has been duly registered at this Port.

Given under my hand and seal, at the Port of New York, this third day of May, in the year one thousand nine hundred and twenty-one.

John Farrell, Acting Deputy Collector of Customs. T. D. Wilson, Deputy Naval Officer.

Office of Collector of Customs, District of New York, Port of New York

I hereby certify the within to be a true copy of the original on record in this Office.

Given under my hand and seal this second day of October, 1922, for official use. No fee.

John Farrell, Acting Deputy Collector of Customs. (Seal.)

[Endorsed:] Cat. No. 1266. Department of Commerce, Bureau of Navigation. Permanent. Duplicate Certificate of Registry. No. 531 of the steamship called the Potomac of New York, N. Y., 9,709 gross, 5,632 net, issued at the port of New York May 3rd, 1921.

[fol. 137] Ex. #9—Oct. 11, 1922

No. 4678

United States of America,

[Vignette]

Department of State

To all to whom these presents shall come, Greeting:

I certify that the files of this Department contain no application either directly or through the German Government for the return of the steamship Antigone (formerly the Neckar), title and possession to which was taken by the United States under the Joint Resolution of May 12, 1917, nor has this Department any record of a claim for compensation having been filed by the former owners.

In testimony whereof I, Charles E. Hughes, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed

---

[18] In the first document of a new vessel, give the name of the person countersigning certificate of measurement.

and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this fifth day of October, 1922.

Charles E. Hughes, Secretary of State, by Ben G. Davis, Chief Clerk. (Seal of Department of State, United States of America.)

[fol. 138] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF BERNARD M. BARUCH

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Bernard M. Baruch, being first duly sworn, deposes and says:

During the years 1919 and 1920, and particularly during the sessions of the Peace Conference at Paris and Versailles, France, he was Economic Adviser to the American Commission to Negotiate Peace between Germany and the United States of America and the other Allied and Associated Powers, and was a Member of the Economic Drafting Committee, the Reparation Commission, the Economic Commission, and the Supreme Economic Council appointed by the Powers represented at the Conference, and had for-
[fol. 139] merly been Chairman of the United States War Industries Board. He further deposes and says, on information and belief based on his participation in the Peace Conference:

With regard to ships, there was general agreement among the Powers at said Conference that practically all of Germany's merchant marine should be surrendered as part replacement of the losses caused by German submarine activities. The question of the allocation of these ships among the different Allied and Associated Powers proved one of the troublesome problems of the Conference. It is here briefly described as typical of the divergence in national points of view which almost every economic problem presented, and the solution of which was made possible only by mutual concession and appreciation of the position of the others.

The French proposed to allocate to the Allied and Associated Powers in proportion to their respective war losses, and to place in a pool for that purpose, all ships which on August 1, 1914, flew the German flag. This would have resulted in the pooling of all ships condemned by prize court (chiefly British) and ships seized in the Western Hemisphere (chiefly by the United States and Brazil).

The British proposed the pooling of all ships which on the date
[fol. 140] of the coming into force of the treaty were entitled to fly the German flag. This, in British opinion, would have pooled ships seized by the United States, Brazil, Cuba, etc., without prize-

court decisions, and would have left undisturbed the title to ships which had been passed through the prize court.

The American delegates proposed that title to all German ships seized during the war should be confirmed in the captor nation, and that only the remaining German ships be placed in the pool.

Mr. Lloyd George strongly urged that ships, which were at most only useful additions to the economic resources of other nations, constituted the very life blood of the British Empire. He protested the injustice of a principle that, in one case, would permit a nation which had not been an active belligerent to increase its tonnage nearly tenfold while only five per cent of Great Britain's tonnage losses would be replaced.

Mr. Clemenceau urged the claims of France as being in a financial situation which rendered it exceedingly burdensome for her to pay foreign charter hire for her imports. He pointed out that during [fol. 141] the war France had abandoned ship construction so as to devote herself exclusively to other forms of war activities to which her industries were better adapted.

President Wilson declined to accede to any proposition that would involve the surrender by the United States of ships which had been taken over by act of Congress.

A suggested solution was that the United States should retain all vessels seized by her; but this action was not to be extended to other nations of the Western Hemisphere. It was not possible, however, that the United States, despite its far greater contribution to the war, should accept a more favored position than that accorded to her Pan-American associates, who to some extent had entered the war under the inspiration of and as an expression of sympathy towards the United States.

The problem was finally solved by agreeing to place all the belligerents on an equality. The right was recognized to retain seized German tonnage upon the condition that payment be made for reparation account up to the fair value of ships retained in excess of those apportioned to replace war losses. President Wilson stated, however, at the time of accepting this solution, that funds for such [fols. 142 & 143] payments could only be made available by Congressional action and therefore that American fulfillment of this aspect of the agreement would depend upon Congress accepting the view expressed therein.

Bernard M. Baruch.

Subscribed and sworn to before me this 28th day of September, 1922. Edward A. Quinlan, Notary Public. (Seal.)

[fol. 144] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF C. J. STIMMING

C. J. Stimming, being duly sworn on his oath says: I reside at Bremen, Germany, and am Director General of the Norddeutscher Lloyd, which is a corporation organized and existing under the laws of the Free and Hanseatic City of Bremen.

I am well acquainted with the affairs of the Norddeutscher Lloyd and know the ships that it owns and formerly owned. In May 1917 said Norddeutscher Lloyd was the registered and actual owner of the S. S. then called the "Neckar," which steamer had been laid up at [fol. 145] the Port of Baltimore following the outbreak of the European War in 1914. Said steamship Neckar was on May 12, 1917, registered at the Court Register in Bremen, which was her home port, and which Court is the proper place of registry for vessels of Bremen ownership. The Norddeutscher Lloyd has never executed or delivered any bill of sale or other document for the transfer of the title of, or ownership, either absolutely or pro hac vice, of said steamer to any person whomsoever, and has never delivered the possession of said steamer, under charter or otherwise, to any person whomsoever, and particularly has never granted or conveyed to the United States of America title to, or possession of, or the right to use said steamer. In the usual course of business there was reported to me as a director of the Norddeutscher Lloyd the fact that some time in April, 1917, certain persons purporting to represent the United States came aboard the said steamer and took possession thereof and removed the master and crew, and that the master protested to said persons against the seizure of the ship. Said steamer was still registered in the name of the Norddeutscher Lloyd in the said Court Register at Bremen on October 9, 1919. So far as I am aware neither the United States of America nor any other Government has ever put the said steamer through a prize court either for purposes of detention, seizure, condemnation, requisition, or otherwise.

I am temporarily in the United States on the business of my company and have only today been informed of the pendency of [fol. 146] the above entitled action and requested by Mr. Ryan of counsel for the libellants, to make an affidavit setting forth the facts regarding ownership of the said steamship. Neither I nor my company have any interest, pecuniary or otherwise, in this action.

Carl J. Stimming.

Sworn to and subscribed before me this third day of October, 1922. W. B. Manee, Notary Public, New York County, No. 450. New York Co. Register No. 4455. Kings County Clerk's No. 124. Term expires March 30th, 1924. (Seal.)

[fol. 147] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—January 23, 1923

Bigham, Englar & Jones, Kirlin, Woolsey, Campbell, Hickox & Keating, and Carter, Ledyard & Milburn, Proctors for Libellants; D. Roger Englar, T. Catesby Jones, James W. Ryan, John M. Woolsey and John M. R. Lyeth, Advocates.

William Hayward, United States Attorney, Proctor for Respondent; J. Frank Staley, Special Assistant to the Attorney General; Leslie P. Scott and John Hunter, Special Assistants to the United States Attorney, Advocates.

AUGUSTUS N. HAND, District Judge:

This is a consolidated cause in admiralty brought by the owners [fol. 148] of the S. S. "Gaelic Prince," and the owners of cargo thereon, *the* recover damages arising from a collision on October 9th, 1919, between the S. S. "Antigone" and the "Gaelic Prince" in Ambrose Channel.

The case comes before the court upon a suggestion filed by the United States Attorney on behalf of the United States questioning the jurisdiction of the Court. The suggestion sets forth that:

The "Antigone" was formerly the North German Lloyd Liner "Neckar" that had taken refuge in a port of the United States prior to the time when war was declared upon Germany.

By Executive Order made on June 30, 1917, pursuant to Joint Resolution of Congress of May 12, 1917, the President ordered that through the United States Shipping Board there be taken over the title and possession of the "Antigone." The Shipping Board directed Mr. A. V. Lynch to take the vessel into possession, and, on July 17, 1917, he boarded the vessel, and after stating that he took her over, affixed his order of appointment in a conspicuous place thereon.

[fol. 149] On August 29, 1917, the President directed the transfer of the vessel by the Shipping Board to the Navy to be commissioned as a transport.

A Board of Survey, appointed by the Secretary of the Navy to appraise the vessel, filed its appraisal on May 1st, 1918, in the sum of $424,260.

On September 24, 1919, the vessel was transferred by the Navy Department to the Army Transport Service.

On October 9th, 1919, the date of the collision, the "Antigone" was manned by officers and men employed by the War Department, and was engaged in the transportation of supplies and troops of the United States Army between our ports and ports in England and France.

On March 9, 1920, the Suits in Admiralty Act was passed prohibiting the arrest by judicial process in rem of any vessel in the possession of the United States and substituting an action in personam

against the United States. By virtue of that Act this cause was brought.

[fol. 150] The Joint Resolution of May 12, 1917, provided:

"That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, * * * which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, * * * and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

"Sec. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings, to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation."

* * * * * * *

The principal point urged by the libellants in support of their claims is that the Government has no immunity because at the time of the collision it had neither title nor rightful possession. It is contended that neither title nor possession in this case could be law-
[fol. 151] ful unless obtained in the course of prize proceedings. We have, however, an Act of Congress passed under the war power. All decisions made under other conditions must yield to this. The terms "immediate possession and title" evidently cannot have contemplated proceedings in a prize court. International Law will be enforced in our courts but not in the face of a constitutional act of Congress. I can see no reason why the customary suit in admiralty may be supplanted by direct governmental action if Congress clearly so prescribes. Miller v. United States, 11 Wall. 305. Nor was it unlawful to apply to ships much the same sort of procedure as the Trading with the Enemy Act gave to the Alien Property Custodian in respect to property on land.

The Treaty of Peace with Germany by according to the United States the advantages stipulated for the benefit of the United States in the Treaty of Versailles, would seem to confirm all departmental orders regarding the transfer of German property. Proof was adduced at the trial that no claim has been filed with the Department of State for the return of the vessel in question, nor for compensation for her taking.

[fols. 152-165] By reason of the foregoing, the libels cannot stand for the title was in the United States at the time of the collision

and the vessel was engaged in military service. The libels are therefore dismissed with costs.

A. N. H., D., J.

[fols. 166-178] In United States District Court

[Title omitted]

Judgment—February 28, 1923

The above entitled consolidated causes, having come on for trial, upon the pleadings and the proofs adduced by the respective parties, and the Court having rendered a decision that it is without jurisdiction to entertain the causes of action set forth by the libellants above enumberated, which said opinion has been filed herein.

Now on motion of William Hayward, United States Attorney for the Southern District of New York, proctor for respondent, United States of America, it is

Ordered that the above entitled consolidated causes, and each and every one of them, be and the same are hereby dismissed.

Augustus N. Hand, U. S. D. J.

[fol. 179] In United States District Court

[Title omitted]

Judge's Certificate—February 28, 1923

The District Court of the United States for the Southern District of New York hereby certifies to the Supreme Court of the United States that the above entitled consolidated causes came on to be heard upon the amended libels, the suggestions or special pleas of the respondent and motions to dismiss the libels therefor, and the proofs of the libellants in support of the allegations of jurisdictional facts in the amended libels, and of the respondent in support of the allegations of non-jurisdictional facts in the said suggestions or special pleas of the respondent.

The amended libels are filed in personam against the United States of America under the provisions of the suits in Admiralty Act of March 9th, 1920, and seek to enforce a liability of the Steamship [fol. 180] "Antigone" for collision damages which she is alleged to have incurred on October 9th, 1919, as a privately-owned vessel before she came into the lawful possession or ownership of the United States. The amended libels allege that after the collision and before the commencement of suit the United States came into lawful possession of the "Antigone," thus preventing the libellants from suing her in rem except as provided in the Act of March 9th, 1920 aforesaid. The respondent denies the jurisdiction of this

Court in these consolidated causes by setting up in its suggestions, as new facts in the nature of a plea in bar, that on July 17th, 1917, the President of the United States seized the "Antigone" and therefore that, under the provisions of the joint resolution of Congress of May 12th, 1917, the "Antigone" at the time of the collision was owned by and in the lawful possession of the United States and was a public vessel of the United States immune from the jurisdiction of this Court. The respondent also contends that even assuming that the executive seizure, without the usual deposit of value or Court proceedings, was insufficient to transfer the right of use, in addition to the right of detention or immediate possession, the Treaty of Peace of July, 1921, between Germany and the United States confirmed or cured the defective transfer.

The libellants deny that the seizure of the "Antigone" without being supplemented by a proper deposit of her value, or by prize or [fol. 181] other Court proceedings, transferred to the United States the right to use the vessel for Governmental or other purposes. They content that the possession of the "Antigone" at the time of the collision was vested not in the United States of America but in a prize court through the seizing officers as its servants or custodians under the principle that Government officers seizing the vessel as prize take custody not as Government officers but as servants of the prize court, and that her use by the United States after the seizure without requisition order or condemnation by the prize court being in violation of both Municipal and International law was insufficient to divest the prize court of its possession actual or constructive, or to convert the "Antigone" into a sovereign vessel entitled to immunity from the ordinary liabilities of merchant vessels. The libellants further contend that the joint resolution of May 12th, 1917 contemplated that possession and title to the vessels would be taken over by the President by the usual method authorized by International and Municipal Law, namely by deposit of her value or commencement, as soon as practicable after the seizure, of prize court proceedings. The libellants contend further that if the Joint Resolution of May 12th, 1917 contemplated a transfer of the right to use, or the title, in addition to mere temporary or immediate possession or custody, without deposit of value or prize court proceedings, the resolution was both unconstitutional and in direct violation of International Law and therefore to that extent invalid. This invalidity or defect was not, the libellants contend, cured by the Treaty of Peace of July, 1921, be- [fol. 182] cause that Treaty did not operate retroactively so as to annul the rights of innocent third persons, such as the libellants, which were vested on October 9th, 1919, at the time of the collision, and in February, 1921, at the time these suits were commenced.

Now, therefore, it is certified that the issues upon which these causes were decided were the following:

1. Whether or not this Court had jurisdiction of this cause.

2. Whether or not Congress by the joint resolution of May 12th, 1917 intended that the President after taking over the immediate possession of the vessels by seizure should take over the right to use

and the title by deposit of the seized vessel's value or by prize court proceedings as required by International Law.

3. Whether or not the joint resolution of Congress of May 12th. 1917 as interpreted by the respondents, although in violation of International Law, should be regarded as valid and binding on this Court.

4. Whether or not the joint resolution of Congress of May 12th, 1917, as interpreted by the respondent, was constitutional.

5. Whether or not the Treaty of Peace of July, 1921, between Germany and the United States by confirming all departmental orders cured the defective seizure so as *the* deprive libellants of any lien or remedy they had in February, 1921, at the time these suits were commenced.

6. Whether or not the interest of the United States in the Steam-[fol. 183] ship "Antigone" at the time of the collision involved herein was sufficient to make her a sovereign vessel entitled to immunity from the ordinary liabilities of private vessels.

I found:

1. That this Court was without jurisdiction.

2. That Congress by the Joint Resolution of May 12, 1917, did not contemplate a deposit of the vessel's value, or proceedings in a prize court.

3. That, as so interpreted, the resolution, although in violation of International Law, should be regarded by this Court as a valid exercise by Congress of its war power.

4. That, as so interpreted, the resolution was constitutional.

5. That the Treaty of Peace of July, 1921, between Germany and the United States confirmed retroactively the executive orders in the years 1917 and 1918 with reference to the Steamship "Antigone" so as to deprive the libellants of any lien or remedy they had in February, 1921, at the time these suits were commenced.

I, therefore dismissed the libels.

I further certify that these are the only questions of law upon the pleadings and process for the decision of the Supreme Court of the United States, and that this Certificate was granted at the term [fol. 184] in which the decree in this case was entered.

Augustus N. Hand, United States District Judge.

[fol. 185] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF CERTIFICATE

SIRS: You will please take notice that the foregoing is a copy of a certificate to the United States Supreme Court which will be presented to the Honorable Augustus N. Hand for settlement in the office of the Clerk of the United States District Court, in the United States Court House and Post Office Building, Borough of Manhattan, City of New York, on the 28th day of February, 1923, at 10:30 A. M.

Bigham, Englar & Jones, 64 Wall Street; Kirlin, Woolsey, Campbell, Hickox & Keating, 27 William Street; Carter, Ledyard & Milburn, 54 Wall Street, New York City, Proctors for Libellants.

To William Hayward, Esq., United States Attorney for the Southern District of New York, Room 700, 45 Broadway, New York City, Proctor for Respondent; Alexander Gilchrist, Esq., Clerk, U. S. District Court, Southern District of New York, Post Office Building, New York City.

[fols. 186 & 187] CITATION—In usual form; omitted in printing

[fols. 188-191] BOND OF APPEAL FOR $250—Approved and filed May 26, 1923; omitted in printing

---

[fol. 192] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed May 26, 1923

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The above named libellants hereby appeal to the Supreme Court of the United States from the decree entered in these consolidated causes on the 28th day of February, 1923, for the reasons specified in the assignment of errors which is filed herewith, and pray that their appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States.

[fol. 193] And your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal be made.

Bigham, Englar & Jones, Carter, Ledyard & Milburn, Kirlin, Woolsey, Campbell, Hickox & Keating, Proctors for Libellants.

The above petition is granted and the appeal allowed upon giving bond conditioned as required by law in the sum of $250 Dollars.

Augustus N. Hand, United States District Judge.

[fol. 194] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 26, 1923

The libellants hereby assign errors in the rulings and proceedings of the District Court herein as follows:

1. The Court erred in holding that respondent was in lawful possession of the Steamship "Antigone" at the time of the collision involved herein.

2. The Court erred in holding that at the time of the collision the Steamship "Antigone" was a public vessel of the United States entitled to immunity from the ordinary collision liabilities of private vessels.

3. The Court erred in holding that the President took over the immediate possession and title to the Steamship "Antigone" as directed by the Joint Resolution of Congress of May 12, 1917.

[fol. 195] 4. The Court erred in holding that the United States of America at the time of the collision had not under international and municipal law forfeited any right of possession by failing within a reasonable time after the seizure to institute proceedings in a Prize Court for the condemnation of the vessel or deposit her value with a Prize Court or an assistant treasurer of the United States.

5. The Court erred, after holding that the President took over immediate possession and title to the steamship "Antigone" as directed by the Joint Resolution of May 12, 1917, in further holding that said Resolution as so interpreted was constitutional.

6. The Court erred in holding that the President was authorized by the Joint Resolution of May 12, 1917, to take over the immediate possession and title to the steamship "Antigone" otherwise than in accordance with the method and usage sanctioned by international law.

7. The Court erred in holding that a seizure of a private unarmed enemy merchant vessel innocently in a port of the United States at the outbreak of hostilities conferred a right of possession of the vessel on the United States of America in the absence of evidence that such seizure was followed within a reasonable time by a deposit of her value or proceedings in a Prize Court for her condemnation.

[fol. 196] 8. The Court erred in holding that the Treaty of Peace of 1921 between Germany and the United States operated retroac-

tively so as to injure innocent third persons, the libellants in the present cause by conferring on the United States lawful possession of the steamship "Antigone" as of October 9, 1919, the date of the collision involved herein.

9. The Court erred in holding that A. M. Vanardi was ever a Commissioner of the United States Shipping Board and/or an Agent of the President of the United States authorized directly or through his servant, A. V. Lynch, to take over the immediate possession and/or title to the steamship "Antigone."

10. The Court erred in failing to dismiss the suggestion of want of jurisdiction filed by the United States of America.

11. The Court erred in entering a decree dismissing the libel.

12. The Court erred in holding that mere sovereign use without right of lawful possession or ownership is sufficient to confer on a private merchant vessel the immunity of public vessels from the ordinary collision liabilities of private merchant vessels.

13. The Court erred in failing to enter a decree for the libelants on the grounds stated in the jurisdictional certificate signed by said [fol. 197] Court on March 1, 1923, and directed to the Supreme Court of the United States.

Bigham, Englar & Jones, Carter, Ledyard & Milburn, Kirlin, Woolsey, Campbell, Hickox & Keating, Proctors for the Libellants.

[fol. 198] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION FOR SETTLEMENT OF TRANSCRIPT OF RECORD

SIRS: You are hereby notified that a motion will be made at 10:30 o'clock a. m. on Tuesday morning, June 3rd, 1924, at the chambers of Hon. Augustus N. Hand, on the 12th floor of the Woolworth Building, New York City, for an order directing the Clerk to settle and certify the documents and papers, copies of which are attached hereto, as the Transcript of Record on appeal to the Supreme Court of the United States.

Dated New York City, May 29, 1924.

Yours, etc., Bigham, Englar & Jones, Kirlin, Woolsey, Campbell, Hickox & Keating, Carter, Ledyard & Milburn, Proctors for Libellant.

To the Solicitor General of the United States, Washington, D. C.; [fol. 199] William Hayward, Esq., United States Attorney for the Southern District of New York.

[fol. 199½] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR TRANSCRIPT OF RECORD—June 6, 1924

On motion of Messrs. Bigham, Englar & Jones, Messrs. Kirlin, Woolsey, Campbell, Hickox & Keating and Messrs. Carter, Ledyard & Milburn, proctors for libellants; and after hearing J. Frank Staley, Special Assistant in Admiralty to the Attorney General of the United States, and John Hunter, Esq., on behalf of the respondent; and it appearing that the papers attached hereto constitute a true and complete transcript of the pleadings, testimony, exhibits and other proofs introduced at the trial of this cause; and it appearing that the papers attached hereto correspond with the minutes and notes taken by the court at the trial; and good cause appearing therefor, it is hereby

Ordered that the attached papers be certified to the Supreme Court of the United States as being a true, full and correct copy of the pro-
[fol. 200] ceedings had and orders entered as therein stated in consolidated cause No. 77—57 wherein L. Littlejohn & Co., Inc., et als., were libellants and the United States of America was respondent as the same appears on record and on file in the office of the Clerk of this court, all of which constitute the entire transcript of the proceedings in the cause; and it is further

Ordered that the Clerk of this court execute and file a certificate in accordance herewith.

Augustus N. Hand, United States District Judge.

[fols. 201 & 202] ORDER FOR TRANSCRIPT OF RECORD—Omitted; printed side page 199 ante

---

[fol. 203] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing is a correct transcript of the record of the said District Court in the above entitled case as settled by the Court.

J. Frank Staley, Special Assistant to the Attorney General.
Bigham, Englar & Jones, Kirlin, Woolsey, Campbell, Hickox & Keating, Carter, Ledyard & Milburn, Proctors for Libellants.

[fol. 204] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as settled by the court.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 13th day of June in the year of our Lord one thousand nine hundred and twenty-four and of the Independence of the said United States the one hundred and forty-eighth.

Alex. Gilchrist, Jr., Clerk. (Seal of District Court of the United States, Southern District of N. Y.)

Endorsed on cover: File No. 30,411. S. New York D. C. U. S. Term No. 446. L. Littlejohn & Co., Inc., General Silk Importing Company, Henry W. Peabody & Co., et al., appellants, vs. The United States of America. Filed June 14th, 1924. File No. 30,411.

(5108)